

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**NATIONAL RIFLE ASSOCIATION OF
AMERICA,** §
§
§

Plaintiff and Counter-Defendant, §
§
§

v. §
§
§

Case No. 3:19-cv-02074-G

ACKERMAN MCQUEEN, INC., §
§
§

Defendant and Counter-Plaintiff, §
§
§

and §
§
§

**MERCURY GROUP, INC., HENRY
MARTIN, WILLIAM WINKLER, AND
MELANIE MONTGOMERY** §
§
§
§
§

Defendants. §
§
§

**APPENDIX IN SUPPORT OF PLAINTIFF NATIONAL RIFLE ASSOCIATION OF
AMERICA'S RULE 72 OBJECTIONS TO MAGISTRATE'S DISCOVERY ORDER**

The National Rifle Association of America (the “NRA”) offer the following evidence
in support of Plaintiff’s Rule 72 Objections to Magistrate’s Discovery Order.

EX	DESCRIPTION	APP
	Declaration of Philip J. Furia, dated December 30, 2021	App. 001- App. 002
A	Text Order, dated December 16, 2021 [Doc. No. 430]	App. 003- App. 004
B	Oral Argument Transcript, dated December 15, 2021	App. 005- App. 094
C	Excerpt from Deposition Transcript of Wayne LaPierre, dated August 20, 2021	App. 095- App. 097
D	2018 and 2019 Budget Comparisons spreadsheet (AMcTX-00065376-AMcTX-00065391)	App. 098- App. 114

E	Employment Agreement of Col. Oliver North dated May 15, 2018 (AMc-056595-056604) (<i>Filed under seal</i>)	App. 115-App. 125
F	Employment Agreement of Dave Valinski, dated September 4, 2018 (AMc-036766-036775) (<i>Filed under seal</i>)	App. 126-App. 136
G	Ackerman Stockholder Listing, dated February 24, 2021 (<i>Filed under seal</i>)	App. 137-App. 138

Dated: December 30, 2021

Respectfully submitted,

BREWER, ATTORNEYS & COUNSELORS

By: /s/ Philip J. Furia
Cecelia L. Fanelli
Pro Hac Vice
clf@brewerattorneys.com
Sarah B. Rogers
New York Bar No. 4755252
sbr@brewerattorneys.com
Philip J. Furia
Pro Hac Vice
pjf@brewerattorneys.com
Alessandra P. Allegretto
Texas Bar No. 24109575
apa@brewerattorneys.com
BREWER, ATTORNEYS & COUNSELORS
1717 Main Street, Suite 5900
Dallas, Texas 75201

**ATTORNEYS FOR THE PLAINTIFF
COUNTER-DEFENDANT NATIONAL RIFLE
ASSOCIATION OF AMERICA**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 30th day of December 2021.

/s/ Philip J. Furia

Philip J. Furia

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NATIONAL RIFLE ASSOCIATION OF
AMERICA,

Plaintiff and Counter-Defendant,

v.

Case No. 3:19-cv-02074-G

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

and

MERCURY GROUP, INC., HENRY
MARTIN, WILLIAM WINKLER, AND
MELANIE MONTGOMERY

Defendants.

**DECLARATION OF PHILIP J. FURIA IN SUPPORT OF PLAINTIFF
NATIONAL RIFLE ASSOCIATION OF AMERICA'S RULE 72
OBJECTIONS TO MAGISTRATE'S DISCOVERY ORDER**

I, Philip J. Furia, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at Brewer, Attorneys & Counselors, counsel for Plaintiff/Counter-Defendant National Rifle Association of America ("NRA") in this action. I submit this declaration in support of the NRA's Objections to the Order issued by Magistrate Judge Toliver, dated December 16, 2021 [Doc. No. 430]. As counsel for the NRA, I have reviewed pleadings and other documents related to this matter, and I am familiar with the facts and circumstances of this case.

2. I am fully competent and qualified in all respects to make this declaration. The facts stated herein are true and correct, and unless otherwise qualified, are within my personal knowledge.

3. The deposition of Col. Oliver North was conducted on September 15, 2021.

4. The deposition of Skye Brewer occurred on August 11, 2021.
5. Attached as exhibits to this Declaration are true and correct copies of the following documents:

EXHIBIT A: Text Order, dated December 16, 2021 [Doc. No. 430]

EXHIBIT B: Oral Argument Transcript, dated December 15, 2021

EXHIBIT C: Excerpt from the Deposition Transcript of Wayne LaPierre, dated August 20, 2021

EXHIBIT D: 2018 and 2019 Budget Comparisons spreadsheet (AMcTX-00065376-AMcTX-00065391)

EXHIBIT E: Employment Agreement of Col. Oliver North dated May 15, 2018 (AMc-056595-056604)

EXHIBIT F: Employment Agreement of Dave Valinski, dated September 4, 2018 (AMc-036766-036775)

EXHIBIT G: Ackerman Stockholder Listing, dated February 24, 2021

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of December 2021.

/s/ Philip J. Furia

Philip J. Furia

EXHIBIT A

U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:19-cv-02074-G-BK

National Rifle Association of America v. Ackerman McQueen Inc et al Date Filed: 08/30/2019
Assigned to: Senior Judge A. Joe Fish Jury Demand: Both
Referred to: Magistrate Judge Renee Harris Toliver Nature of Suit: 890 Other Statutes: Other
Cause: 15:1125 Trademark Infringement (Lanham Act) Statutory Actions
Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/16/2021	430	<p>ELECTRONIC ORDER: Defendant <i>Ackerman McQueen, Inc.'s Motion to Compel Deposition of William A. Brewer III</i>, Doc. 323, is GRANTED, for the reasons stated on record during the hearing held on December 15, 2021. The Court has determined good cause exists to appoint a Special Master to oversee this deposition. Accordingly, the Court appoints the Honorable Judge Paul D. Stickney to act as Special Master. The parties are ORDERED to share the costs of the Special Master's services and to confer with Judge Stickney for purposes of scheduling Mr. Brewer's deposition.</p> <p>As to Defendant <i>Ackerman McQueen, Inc.'s Motion to Compel Production of Forensic Risk Alliance Documents</i>, Doc. 391, Plaintiff is ORDERED to submit all responsive documents currently being withheld to the Court for <i>in camera</i> review by <u>January 6, 2022</u>.</p> <p>As to Plaintiff <i>The National Rifle Association of America's Motion to Compel Certain Documents Withheld Under Deficient Claims of Privilege</i>, Doc. 395, Defendants are ORDERED to file a privilege log by <u>January 6, 2022</u>, pertaining to all post-April 2019 and pre-2018 documents withheld. Further, Plaintiff is ORDERED to file any objections to Defendants' current privilege log by <u>January 6, 2022</u>. Defendants may respond to Plaintiff's objections <u>within 21 days</u> of the date they are filed. (Ordered by Magistrate Judge Renee Harris Toliver on 12/16/2021) (chmb) (Entered: 12/16/2021)</p>

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NATIONAL RIFLE ASSOCIATION OF) 3:19-cv-02074-G-
AMERICA,) BK
PLAINTIFF,)
vs.)
ACKERMAN MCQUEEN, INC., MERCURY) DALLAS, TEXAS
GROUP, INC., HENRY MARTIN and JESSE)
GREENBERG,)
DEFENDANTS.) December 15, 2021

TRANSCRIPT OF MULTIPLE MOTIONS HEARING
BEFORE THE HONORABLE RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE
(REPORTED REMOTELY)

A P P E A R A N C E S:

FOR THE PLAINTIFF:

MS. SARAH BROOKE ROGERS
BREWER ATTORNEYS & COUNSELORS
750 Lexington Ave, Floor 14
New York, New York 10022
sbr@brewerattorneys.com
(212) 751-2849

1 FOR THE DEFENDANT
2 ACKERMAN MCQUEEN
3 AND OTHERS:

MR. BRIAN E. MASON
MR. G. MICHAEL GRUBER
MS. KELSEY TAYLOR
DORSEY & WHITNEY, LLP
300 Crescent Court, Suite 400
Dallas, Texas 75201
mason.brian@dorsey.com
gruber.mike@dorsey.com
taylor.kelsey@dorsey.com
(214) 981-9900

7
8
9 FOR THE THIRD PARTY
HBC CPAs & ADVISORS:

MR. GARY QUINNETT
THE LAW OFFICES OF GARY DAVID QUINNETT
10005 N. May Avenue, Suite 120
Oklahoma City, Oklahoma 73120
gary@GQ-Law.com
(405) 607-2266

12
13 ALSO APPEARING:
14

MS. KELLI SALEM
MS. CINDY McGEOCH
MR. QUINN BURNS

15
16
17
18
19 COURT REPORTER:

MR. JEFF L. FOSTER, RMR, CRR
United States Court Reporter
1100 Commerce St., Room 1504
Dallas, Texas 75242
jeff_foster@txnd.uscourts.gov
(214) 753-2349

23
24 Proceedings reported by mechanical stenography and
25 transcript produced by computer.

1 MOTIONS HEARING -- DECEMBER 15, 2021

2 P R O C E E D I N G S

3 THE COURT: This is Case No. 3:19-CV-2074-G-BK,
4 National Rifle Association of America vs. Ackerman McQueen,
5 Incorporated and others. And this is a hearing on a number of
6 discovery motions. All have been referred to me by District
7 Judge Fish.

8 May I have the attorney announcements, please?

9 MS. ROGERS: For plaintiff, the National Rifle
10 Association of America.

11 THE COURT: Maybe it's me. Hold on a second. Just a
12 second. Okay. Go ahead now.

13 MS. ROGERS: Can you hear me, Your Honor?

14 THE COURT: I can now.

15 MS. ROGERS: Okay. This is Sarah Rogers with the
16 Brewer Attorneys and Counselors. I'm appearing today on behalf
17 of the plaintiff, the National Rifle Association of America.

18 THE COURT: Thank you.

19 MR. MASON: Good afternoon, Your Honor. Brian Mason,
20 Dorsey & Whitney, on behalf of Ackerman McQueen, Mercury Group,
21 Mr. Winkler, Ms. Montgomery and Mr. Martin.

22 MR. GRUBER: Your Honor, this is Mike Gruber and I am
23 here on behalf of the same parties as Mr. Mason.

24 THE COURT: Okay.

25 MR. QUINNETT: Your Honor, Gary Quinnett, appearing on

1 behalf of third-party HBC CPAs and Advisors in Oklahoma City.

2 THE COURT: Thank you. Any other attorneys
3 participating today? Okay. I'm going to drive the bus, so I'm
4 going to tell you what we're going to take up first. Let's --
5 let's go to the motion to quash the -- or the motion, excuse me,
6 to compel the deposition of Mr. Brewer.

7 MR. GRUBER: Yes, Your Honor. That's what we're going
8 to take first?

9 THE COURT: That's what we're going to take up first.

10 MR. GRUBER: Okay.

11 THE COURT: So we're all on the same page. My first
12 question to both parties is, why should *Shelton* -- you know, the
13 *Shelton* inquiry, the factors under *Shelton* even apply as to
14 Mr. Brewer if there is the potential of him being a witness,
15 which Judge Fish has found?

16 MR. GRUBER: Your Honor, we would say that we went
17 through the legal analysis so that we fully briefed it. I don't
18 believe that he should be, because I think that in the Virginia
19 case his law firm represented, his partners represented that he
20 would be a fact witness in the case most likely. And I think
21 Judge Fish has also determined that he'll probably be a fact
22 witness.

23 THE COURT: Ms. Rogers?

24 MS. ROGERS: Yes, Your Honor, as we briefed, we don't
25 think the dispositive factor is whether Mr. Brewer may be a fact

1 witness, but whether he is involved in trial preparation.

2 THE COURT: Well, why would that be since -- since
3 other case law outside of *Shelton* in the situation where an
4 attorney is -- even an attorney involved in the case is a
5 potential witness says that he can be deposed?

6 MS. ROGERS: Well, we believe *Shelton* deals with the
7 situation, Your Honor, and courts in the circuit that have cited
8 *Shelton* have also been dealing with situations where he is a
9 potential witness. If he weren't a potential witness, then we
10 wouldn't be having this conversation. His fact deposition is
11 sought. The defendant has asserted there's some relevance to it.
12 We obviously -- we obviously have to disagree on that. So you
13 have counsel who is a potential witness. But there's still a
14 whole bunch of other considerations that apply in addition to
15 potential relevance of the fact testimony as *Shelton* and the
16 cases invoking have laid out.

17 THE COURT: So your position is that in *Shelton* the
18 situation was like this one, because the attorney was a potential
19 fact witness. And even the attorney's firm had represented that
20 the attorney was a potential fact witness?

21 MS. ROGERS: Your Honor, I'm not certain that in
22 *Shelton* the attorney's firm had acknowledged that his fact
23 testimony might be sought. But certainly almost by definition
24 the dispute would haven't arisen if the attorney wasn't a
25 potential witness. The fact that is deposition is sought because

1 the attorney is alleged to possess, you know, factual personal
2 knowledge relevant to the proceeding, and that's how the dispute
3 came before the Court.

4 MR. GRUBER: And, Your Honor, if I could just point out
5 Mr. Brewer compared to anybody in the NRA is the -- is the most
6 consistent and constant actor on everything -- on everything
7 they've raised. He's the one that's leaked stuff to the press
8 and, you know, on the libel and all that type of thing. And he's
9 the one that's -- you know, the only one that knows about the
10 audits, because he's conducted them all, except for the
11 independent one where he sent a 17-year attorney with the Brewer
12 firm to this independent accounting firm for a year while
13 they -- they did the audit and then she came back. So it's just
14 amazing, Your Honor. He is the main actor in everything that
15 happened in this case from the NRA's side.

16 MS. ROGERS: And, Your Honor, that's obviously --
17 sorry, Your Honor.

18 THE COURT: No, go ahead.

19 MS. ROGERS: I mean, those factual assertions that
20 Mr. Gruber just made and that are substantiated nowhere in the
21 record are obviously disputed by the NRA. And, you know, I
22 think -- I think Mr. Gruber may have misspoken, but there was
23 not, in fact, a 17-year attorney who was sent anywhere.

24 THE COURT: You know, that's here nor there, you
25 know --

1 MS. ROGERS: Right.

2 THE COURT: -- with this dispute. So I know that's
3 what they've alleged and I'll, you know, take it for what it's
4 worth for this dispute, so --

5 MR. GRUBER: And it was an employee with his law firm.
6 Sorry.

7 MS. ROGERS: But, Your Honor, if I could address one
8 thing just briefly.

9 THE COURT: Sure.

10 MS. ROGERS: I think there was an acknowledgment at
11 some point that, you know, Mr. Brewer would not be making
12 presentations to the Court as would raise issues under the
13 Witness Advocate Rule. That's what Mr. Gruber is citing when we
14 talk about Mr. Brewer may be a fact witness.

15 But the parameters of the Witness Advocate Rule and the
16 ones that invoke *Shelton* are different. So the standard under
17 *Shelton* is whether the attorney is involved in trial preparation,
18 not whether he's an advocate before the jury as would raise
19 Witness Advocate Rule considerations.

20 THE COURT: Right. And I understand that. My big
21 concern at this point is whether *Shelton* even -- even would
22 apply. And I know you're saying that it's just given that that
23 attorney in *Shelton* was -- was necessarily a potential fact
24 witness, but I don't know that to be the case.

25 MR. GRUBER: And we're not -- we don't -- I don't

1 believe that *Shelton* has actually been adopted by the Fifth
2 Circuit. Whether that really matters or not, it's still probably
3 a good analysis for the right case and I don't think this is the
4 right case.

5 And we believe that in Virginia they just made it clear
6 that Mr. Brewer would most likely be a fact witness in the case.
7 But as you pointed out, Your Honor, Judge Fish has determined
8 that most likely he will be, so --

9 THE COURT: And I'm just looking back over *Shelton* and
10 just trying to see if this was the same situation, and I'm not
11 really seeing that this was the same situation.

12 MS. ROGERS: So, Your Honor, the contention isn't that
13 they're identical situations.

14 THE COURT: Okay.

15 MS. ROGERS: But by definition, you know, there would
16 be no reason to invoke or consider the *Shelton* factor --

17 THE COURT: Well, let me just tell you what it says in
18 *Shelton*. You know, that the point of the deposition supposedly
19 was to simply depose opposing counsel in an attempt to identify
20 information that opposing counsel has decided is relevant and
21 important to his own legal theories and strategy. So that's not
22 the situation. That's not saying that counsel was a fact
23 witness.

24 MR. GRUBER: Your Honor, it could be the -- you know,
25 what's going to be asked is really important and that we not get

1 into privilege law. I hate to put Your Honor in this indelible
2 position, but would you consider monitoring or overseeing the
3 deposition for -- for some period of time in that it's been
4 difficult, you know, in this case. It's very contested on each
5 side and the attorneys have taken their positions strongly.

6 And I can only imagine what the Brewer firm
7 representing Mr. Brewer in a deposition they're going to do as
8 far as what we can ask and not ask and how much leeway they're
9 going to give.

10 I don't know if the Court would -- we could probably
11 put a lot of this to sleep if you would be willing to devote
12 several hours. And I hate to put you in that position, but that
13 would seem to take care of it and we won't get into anything that
14 we shouldn't get into and we won't -- we won't be taking a
15 deposition on any subject we shouldn't, because we would have
16 either the Court or possibly a master to oversee it.

17 THE COURT: I am amenable to a master simply because
18 I'm going to be out for several weeks starting in the morning for
19 surgery and recovery. And so I would be foreseeable to
20 appointing a master to oversee that process.

21 I -- you know, I think even applying the *Shelton*
22 factors there are a number of things that -- you know, I believe
23 Mr. Brewer even under *Shelton* could -- you know, would be
24 required to testify about, you know. There's no other means to
25 obtain the information, that the information is relevant and

1 nonprivileged, and that the information is crucial to the
2 presentation of the case, you know. I know you-all know those
3 are the factors, but just going through and looking at the
4 different topics or potential topics, I can see that Mr. Brewer,
5 even if the Court applies the *Shelton* factors, would have to --
6 would have to sit and be deposed for some of those at least.

7 MR GRUBER: That's where it's just the execution,
8 Your Honor. It really isn't whether we can or not, it's what we
9 do, and that's where a master would be helpful. Or we can go
10 through and --

11 THE COURT: Are all the parties agreeable, Ms. Rogers,
12 to having --

13 MS. ROGERS: I'm sorry, Your Honor. Assuming that a
14 deposition were to take place, obviously --

15 THE COURT: Well, let's assume that, because I'm going
16 to -- I'm going to compel the deposition.

17 MS. ROGERS: So assuming the deposition is compelled --
18 although I would appreciate the opportunity to address the idea
19 that no other means does exist to obtain this information other
20 than the *Shelton* factors, which we believe --

21 THE COURT: Are you going to tell me something that's
22 not in your very thorough briefs about that?

23 MS. ROGERS: Well, I think -- I think I would just
24 underscore some highlights, Your Honor, which is that we've
25 already permitted a deposition of outside counsel's wife. And we

1 just --

2 THE COURT: That was in there.

3 MS. ROGERS: Right. Right. And so we just -- we just
4 think that it's difficult for the defendants to meet the standard
5 under *Shelton*, which we do think under the Northern District case
6 application applying *Shelton*, you know, is invoked here.

7 But setting that aside and that Your Honor has
8 indicated an inclination and assuming that a deposition were to
9 take place, obviously, you know, it would be agreeable to us --
10 we'd rather have a master there overseeing things than not given
11 how defendants have used their other depositions.

12 THE COURT: Okay. Well, I'm going to grant the motion
13 to compel the deposition of Mr. Brewer, III. I am also going to
14 appoint a special master to -- to preside over any objections or
15 other issues that arise during the actual deposition.

16 I'm going to appoint former Magistrate Judge Paul
17 Stickney, and I'm going to require the parties to split the costs
18 of the services of the special master. And I'm going to ask
19 y'all to get with Judge Stickney and determine when he is
20 available before scheduling the deposition of Mr. Brewer.

21 Is there anything else as to -- to do with that motion
22 that I've not covered?

23 MR. GRUBER: Judge, I think that's a very good plan, so
24 thank you.

25 THE COURT: Ms. Rogers?

1 MS. ROGERS: Nothing else, Your Honor.

2 THE COURT: Okay. Let's go on then to the -- oh, and I
3 neglected to mention, but I believe that not -- I can't find that
4 neither parties' position was not -- was substantially
5 unjustified as to that motion, and so I'm going to deny the award
6 of attorneys' fees as to that motion.

7 MR. GRUBER: All right. Thank you, Your Honor.

8 THE COURT: And so let's talk about AMC's motion to
9 compel production of the Forensic Risk Alliance's documentation.

10 MR. MASON: Yes, Your Honor. Brian Mason and I do have
11 a Power Point if the Court would indulge me to spend a few
12 minutes walking through that with respect to this issue.

13 THE COURT: Okay. Go right ahead. I think you have
14 the screen sharing privileges.

15 MR. MASON: Okay. Give me one second, Your Honor. Can
16 Your Honor see that okay?

17 THE COURT: Yes. Can everyone else see the screen that
18 is being shared?

19 MS. ROGERS: Yes, Your Honor.

20 THE COURT: Okay. You may proceed, then, Mr. Mason.

21 MR. MASON: Your Honor, with respect to the FRA -- and
22 I know that this issue has been briefed heavily, and so I'm going
23 to do my best to try not to -- to point out things that are in
24 there, but I do that kind of the history in terms of how we've
25 gotten to this point is very important.

1 This is an issue that started in a Virginia case and in
2 the fall of 2019. I know Your Honor is familiar that there was a
3 hearing up there and there was motion practiced. Ultimately that
4 motion was denied with respect to Ackerman's motion to compel the
5 FRA documents up there. But Judge Dawkins made it very clear
6 that he was not ruling on the privilege, he was denying at that
7 time that he still had questions and concerns and he fully
8 expected the parties would -- would be back.

9 And so subsequently we -- we filed our own motion to
10 compel before Your Honor in early 2020. That was fully briefed.
11 Your Honor ordered the parties to kind of circle back and see if
12 we could figure out any -- any issues with respect to the -- to
13 the FRA documents, among other things. And we did that and we
14 briefed the issues that are in our joint report.

15 And so I'd like to get into -- a little bit going
16 backwards -- a little bit of kind of the history in terms of --
17 of the FRA audit and kind of where -- what happened prior to
18 that.

19 And one of the things that I think is -- is very
20 important, and we talked about this in some other motions as
21 well, but in the summer and fall of 2018 Ackerman began to
22 receive various threats from Mr. Brewer about RICO charges and
23 the FBI raiding Ackerman McQueen's offices. There's been
24 numerous testimony by multiple Ackerman representatives on that.
25 And that began and started in the fall of -- of -- in the summer

1 of 2018.

2 One of the issues in the pleadings that the NRA has
3 taken is there's no contemporaneous documents proving that, you
4 know, any of that actually happened. This is a letter that Angus
5 McQueen drafted -- it was not sent to Mr. La Pierre -- in or
6 around September 24th, 2018. And then he handed it to his
7 secretary and it was sent to his son Revan where he's
8 specifically talking about these threats and Mr. Brewer. And so
9 I wanted to point out for the Court that there is a
10 contemporaneous document in terms of what was kind of going on
11 around -- around that certain time period.

12 With that said, there were three separate audits that
13 were conducted in the fall of 2018 and then in February of 2019.
14 But one of the critical documents that has come out in discovery
15 in this case is this letter from Mr. La Pierre that he wrote in
16 April of 2019. And he described the litigation against Ackerman
17 McQueen which crystalized before the September board meeting in
18 2018. And that September board meeting was on September the 8th
19 and 9th. This is something that obviously we found out well --
20 well after the fact, but there's been additional discovery with
21 respect to this letter, but we believe this is -- this is a
22 critical document to show what the NRA's actual intentions were
23 with respect to Ackerman McQueen in this time period in the fall
24 of 2018.

25 With that said, the NRA had requested various documents

1 from Ackerman. We -- despite the threats that we were receiving
2 we agreed to those. We initially agreed to one with the Brewer
3 law firm in September of 2018. I know we've talked about it a
4 lot in our briefing, but an individual, Mrs. Dillon, who I
5 believe is the senior director of consulting at the Brewer firm,
6 if I have that right, she was with the Brewer firm for about 17
7 years at this particular point. And she along with other
8 representatives from the Brewer firm conducted an onsite -- an
9 in-person audit of Ackerman McQueen's books and records in
10 September of 2018.

11 And in addition to this we're getting -- my client is
12 getting all sorts of letters accusing it of not complying with
13 certain record requests or withholding information, so there's a
14 lot going on in the September time period, especially with
15 respect to Mr. Brewer and his law firm.

16 This is some testimony from what has kind of been
17 referred to as an October 11th, 2018 summit meeting. This was a
18 meeting with -- I believe it was seven or eight representatives
19 from Ackerman McQueen, Mr. La Pierre and Craig Sprague.

20 And there was three topics that were essentially
21 discussed at this meeting. One was the involvement of the Brewer
22 firm with Ackerman McQueen, given the history, given the threats
23 that were being made, the animosity between Mr. Brewer and the
24 McQueen family. And the other issue was budgeting and the
25 involvement of Josh Powell, who was the chief of staff of Mr.

1 La Pierre. And one of the big parts of this discussion at this
2 particular hearing was the involvement of the Brewer firm with
3 respect to Ackerman going forward.

4 The NRA has made a big deal about, you know, we can
5 choose whoever we want to represent us, conduct these
6 audits. You don't have any contractual right to dictate those
7 terms. But, you know, what, they're right. If they wanted the
8 Brewer law firm to continue to deal with Ackerman McQueen they --
9 they absolutely could have chosen to do that.

10 But my client was prepared to resign this account that
11 they had been with for nearly 40 years if they had to continue
12 with dealing with the Brewer law firm. That is how significant
13 that issue was and numerous people have testified to that.
14 There's draft letters that were actually prepared prior to this
15 meeting resigning the entirety of the account.

16 And so there's -- there's been a bunch of discussions
17 and testimony with respect to what was discussed during this
18 particular meeting. But Mr. La Pierre, boiling it down with
19 respect to Mr. Brewer, promised Ackerman McQueen that you guys
20 are not going to have to deal with Mr. Brewer or his firm
21 anymore. That Mr. Brewer is going to be gone in 30 to 60 days,
22 he's going to figure everything out with -- with the New York
23 Attorney General and you guys don't have to do it.

24 But if you won't, you know, resign, if you'll stick
25 with me -- he went around to every single one of my clients in

1 that room, looked them in the eye and said stick with me. And
2 based on those material representations made by Mr. Brewer my
3 clients continued to work and support the NRA.

4 And in addition to that they continued to comply with
5 the requests for documents. This is some other testimony from
6 Mr. Makris talking about some of the similar -- similar
7 discussions that took place on that October 11th, 2018 meeting.

8 So then we fast forward to November of 2018 and there's
9 another audit that's done. And it's not done by the Brewer firm,
10 it's done by the Cooper & Kirk firm. And why is that? It's
11 because the Brewer firm at that time was not going to be dealing
12 or involved with Ackerman McQueen. There's other evidence in the
13 record that, again, supports what was discussed during that
14 meeting and the representations that Mr. La Pierre made to
15 Ackerman McQueen.

16 This particular audit -- this is an e-mail from Nicole
17 Reaves at Cooper & Kirk thanking our client for what was done,
18 what was provided and there was no issue. There was -- there's
19 been no testimony in this case from anyone suggesting there was
20 anything wrong, withheld in any way, shape or form with respect
21 to this November 2018 audit.

22 So what happens next? The NRA continues to want more
23 documents. They ask for another audit and ultimately we've
24 discussed with them having somebody completely independent come
25 in and conduct this audit. And there's an overwhelming amount of

1 testimony at this point in time that it was anything but.

2 Mrs. Dillon shortly after that September 2018 audit
3 left the Brewer firm, she went to NRA, she was contacted by
4 representatives at the Brewer firm and essentially oversaw the
5 FRA audit of Ackerman McQueen in February of 2019. The
6 privileged log that was produced by FRA has her name all over it.
7 There's all sorts of e-mail communications discussing what was
8 taking place. This is a particular e-mail about the revenue that
9 was going to be generated by FRA. She participated, according to
10 some e-mails and in Zoom conferences, with the Brewer firm and --
11 and the NRA.

12 And so I think the record is -- she was not on the
13 ground. I will tell you that. She was not physically on the
14 ground in the room when this audit was conducted. But other than
15 that, from the evidence that we've seen she was essentially the
16 main point of contact and communicating with her -- with her
17 former colleagues of 17 years regarding the entirety of this
18 particular audit. She was also involved in the engagement letter
19 drafting. I know there's documents with Ms. Rogers and
20 Ms. Dillon working out the engagement letter with respect to FRA.
21 This is another e-mail with Ms. Dillon setting up a Zoom meeting
22 with Mr. Frazer, the general counsel, Ms. Rogers, from the Brewer
23 firm.

24 And so with that background, Your Honor, there's really
25 three -- well, there's two main issues. We don't think that the

1 FRA documents are privileged. And I'm going to quickly go over
2 some things with respect to that. But to the extent that the
3 Court does believe there is a privilege here, we believe that
4 privilege has been waived for -- for these three reasons.

5 With respect to the actual privilege the NRA's counsel
6 up in Virginia made clear that FRA was simply hired to conduct an
7 examination of -- of records. And just because they were hired
8 potentially by the NRA or by the Brewer firm doesn't
9 automatically make, you know, their communications with respect
10 to this audit or the results of this audit or how these reports
11 that we're going to talk about were prepared -- it doesn't make,
12 you know, any of those things automatically privileged. FRA was
13 not retained to render legal advice. So they weren't a legal
14 representative that was entitled to any privilege protections.

15 This is, again, from -- well, this is from the Virginia
16 hearing. This is from Mr. Frazer, the general counsel of the
17 NRA, in August of this year, who confirmed that the NRA retained
18 FRA to conduct a factual examination and report the facts.

19 There's also been some suggestion in the NRA's briefing
20 that the FRA was retained as a consulting expert. There's
21 absolutely no evidence of that. And we don't believe that the
22 requirements of that have been -- have been satisfied.

23 So to the extent that the Court does not believe
24 that -- or does believe that these communications and the 1,600,
25 I believe it is approximately, documents we're seeking to compel

1 are privileged, we believe the Offensive Use Doctrine applies.
2 They have taken the position since 2019 that everything with
3 respect to FRA is -- well, I don't want to say everything. They
4 have produced a very limited number of documents, but virtually
5 everything had is -- is privileged.

6 And during the hearing up in Virginia in November the
7 NRA's counsel made clear and represented to the Court, again,
8 that we are not relying on any -- there is no report; that we're
9 not relying on any of their opinions, they were just hired to
10 conduct a factual investigation. And essentially we're not going
11 to -- we're not going to talk about the results. We're not going
12 to talk about the results and we're not going to rely on the
13 results.

14 And, you know, the NRA now has produced, as you know,
15 these six reports. And if they were so confident that they're
16 you know, critical to their case, why didn't they produce them
17 two years ago when we've been asking for them? Why we have spent
18 the time and money for these last two years fighting about these
19 issues, you know, only to now be here now continuing to argue
20 about it?

21 Again, this is in the Virginia -- the Virginia court in
22 November. The NRA's counsel, "We're not offering any conclusions
23 or opinions by FRA, simply the facts. There is no audit report.
24 A report wasn't done." Those were the representations that were
25 made to Judge Dawkins up in Virginia in November of 2019.

1 These are some of the similar questions from
2 Mr. -- from Mr. Hundley and the NRA's counsel up there. And by
3 the way, the Brewer law firm was present at this hearing.
4 Michael Collins, who I understand is no longer with their firm,
5 was present and they were essentially lead counsel in all of
6 these Virginia pleadings.

7 So now we fast forward to August of 2021 and
8 Mr. Frazer's, the general counsel, deposition is taken.
9 Mr. Frazer is asked about the FRA audit, the reports, the results
10 and he starts talking about how there was these presentations
11 done on -- on Zoom. They presented their findings. Ms. Rogers
12 was apparently part of those -- of those particular
13 presentations.

14 And importantly for the first time the NRA says, yeah,
15 we're relying on the NRA audit in support of our claims in this
16 case. That was not what they told Judge Dawkins or us the last
17 two years. This was new.

18 THE COURT: Counsel, let me ask you to stop just --
19 just a moment. Apparently we've lost one of the attorneys.
20 I'm not quite sure who it is, but I'm told we've lost somebody.

21 THE REPORTER: I believe it was Mr. Quinnett, Gary
22 Quinnett.

23 (Pause.)

24 MR. MASON: Your Honor, you're on mute. I don't know
25 if you intended to be, but --

1 THE COURT: I did not. So did you hear any of that
2 that I said?

3 MR. MASON: I did not.

4 THE COURT: Okay. I was saying that Attorney --
5 Attorney Quinnett had dropped off the Zoom hearing we're having
6 and is having some technical difficulties in trying to get back
7 on. We're not talking about his motion yet, but he's trying to
8 get back on. So give us just a minute.

9 MR. MASON: Okay. Thank you, Your Honor.

10 (Pause.)

11 THE COURT: Let me contact the courtroom deputy who can
12 see what's going on with that, because we're not going to wait
13 forever for it.

14 MR. MASON: Your Honor, he did -- can you hear me?

15 THE COURT: Okay. Yes, I can hear you.

16 MR. MASON: He did send me a message and he said his
17 power went off and I guess he tried to reboot, so --

18 THE COURT: Okay.

19 MR. MASON: But obviously it's up to Your Honor. I
20 know this particular issue does not necessarily pertain to -- to
21 him and his clients, but --

22 THE COURT: But he's -- he's got -- he's got a similar
23 issue, however, regarding -- you know, from an opposite
24 perspective, I think, regarding the -- regarding audit documents.
25 That's not true. I'm remembering which one he is on now. No,

1 that's right.

2 MR. MASON: His client is HBC, --

3 THE COURT: HBC, the other auditing firm.

4 MR. MASON: -- Ackerman's accountant. Yes, Your Honor.

5 THE COURT: Yes. Yes.

6 MR. MASON: And we will -- we will talk more about this
7 when obviously Your Honor hears that motion. But I do believe
8 the Court will be happy to know that I think we're -- we've
9 reached an agreement on some things with respect to that motion,
10 not everything, but we're at least --

11 THE COURT: Okay. Well, we won't talk about it until
12 he's back. But I'm going to let you go ahead and continue with
13 your -- your Power Point presentation.

14 MR. MASON: Thank you, Your Honor. Mr. Frazer during
15 that -- the same deposition, again, confirmed that the NRA is, in
16 fact, relying on the audit -- the results from that particular
17 audit in support of their claims in this particular case. And,
18 again, that was -- that was not previously disclosed, that was
19 new information and we believe that with respect to the Offensive
20 Use Doctrine, you know, each -- each one of those elements have
21 been -- have been satisfied.

22 However, there's another issue --

23 THE COURT: Let me ask you a question, though. Because
24 they're saying there was -- I don't know how they're going to use
25 something that doesn't exist, but, okay, they're saying they're

1 going to -- or they did say that they were going to use something
2 that they don't have. Is that what you're understanding?
3 Because they're saying they don't have any audit from FRA. Is
4 that right?

5 MR. MASON: Well, I think -- I think that was -- that
6 was -- that's part of the issue, Your Honor. I think they
7 represented to the court in Virginia that there was no report,
8 that there was no kind of summary of the findings, so that there
9 wasn't anything to compel. There wasn't anything to produce.

10 But now -- and I've got a slide on this as well --
11 Ms. Rogers represented to Judge Fish at a recent hearing that
12 there were these reports. And these are the reports that the --
13 the NRA selectively chose to now produce within -- within the
14 last month. So I think that there are actually -- well, yeah,
15 there are documents. There are these reports. And, in fact,
16 they've -- they have now filed these reports in support of their
17 motion for summary judgment. And not only that, they filed them
18 in the public record.

19 So we've gone from everything is privileged, there's no
20 report, we're not going to give you anything, to two years later
21 asking if we will agree that there's no subject matter waiver.
22 We tell them no. They produce the documents anyways. Then they
23 say, oh, well, we have to give them to our experts now. And then
24 we file them in support of our motion for summary judgment and we
25 filed them in the public record.

1 THE COURT: But let me ask you, Ms. Rogers, what --
2 what's being withheld at this point?

3 MS. ROGERS: Thank you, Your Honor. So before I
4 address this motion -- and I apologize, there may have been some
5 confusion, but based on the notice we received from the Court it
6 was our understanding that this hearing covered ECF-235 and 236,
7 the motions to quash. So we do object to, you know, any decision
8 that's rendered on any other motions at this hearing.

9 THE COURT: I think you're wrong about that, because
10 I don't even have to have a hearing to rule on the motion. So --

11 MS. ROGERS: Right. Well, we were just -- you know, we
12 don't really feel that we were noticed, but I understand, Your
13 Honor, and we don't -- we obviously don't dispute your abilities
14 to rule on motion.

15 THE COURT: Okay.

16 MS. ROGERS: I'm happy to lend some color here. So
17 there's a whole -- there's a whole bunch of FRA documents and the
18 NRA has never withheld all of them. So there was an initial
19 discovery dispute in the Virginia court. And just to be clear
20 Mr. Mason, you know, claims that FRA's documents, none of them
21 were ever privileged, because this was just an accounting firm
22 doing a record inspection. But we've produced the engagement
23 letter governing FRA's engagement and it's very clear that what's
24 happening here is --

25 THE COURT: Were they engaged to give legal advice?

1 MS. ROGERS: They were engaged by the Office of the
2 General Counsel to facilitate to provide forensic accounting --

3 THE COURT: Were they engaged to give legal advice?

4 MS. ROGERS: Not to give legal advice, Your Honor,
5 to --

6 THE COURT: Were they engaged to participate in the
7 litigation?

8 MS. ROGERS: To facilitate -- to facilitate -- to
9 facilitate legal advice by the Office of the General Counsel in
10 connection with pending and anticipated litigation.

11 THE COURT: If the litigation is based on the results
12 of the audit, it's hard to see how they could have been engaged
13 in anticipation of litigation. And even so, if their role isn't
14 to provide legal advice, how can what they -- what they produced
15 be work product?

16 MS. ROGERS: Well, that's a great question, Your Honor,
17 or several. Let me address them one by one. So in
18 recent pending and anticipated litigation, the pending and
19 anticipated litigation referenced in the FRA engagement is not
20 this litigation. There were two pending lawsuits at the time
21 FRA was engaged. One was settled around the time FRA was engaged
22 and there's another that's still pending that implicated
23 Ackerman's documents and implicated these issues.

24 And the parties had been --

25 THE COURT: Implicated how?

1 MS. ROGERS: Well, I have to be careful, Your Honor,
2 because I don't want to get into matters that may be privileged,
3 but Ackerman --

4 THE COURT: So tell me about the litigation. You're
5 telling me there's some claims that --

6 MS. ROGERS: Yes.

7 THE COURT: So can you tell me that?

8 MS. ROGERS: Sure. So there were two lawsuits, Your
9 Honor. One was with an insurance broker that involved the Carry
10 Guard program. So Carry Guard was a membership program for NRA
11 members and others to, you know, prefer concealed carry firearms.
12 It had an insurance component and a training component. Ackerman
13 was deeply involved in the marketing of that program, which was
14 also disputed in the matter in the litigation.

15 So there was a subpoena to Ackerman for its documents
16 and that was -- this Cooper & Kirk -- what Mr. Mason refers to as
17 the Cooper & Kirk audit was really my co-counsel in that lawsuit
18 going to look at some documents that related to -- that might
19 have been subpoenaed in that case and were relevant to settlement
20 negotiations.

21 THE COURT: And how did the audit work into that? What
22 did the audit of AMC have to do with that?

23 MS. ROGERS: Well, that's a great question, Your Honor,
24 because the answer is nothing. So --

25 THE COURT: So I'm not following your argument, then,

1 --

2 MS. ROGERS: Of course. So there were --

3 THE COURT: -- that it was in anticipation of
4 litigation.

5 MS. ROGERS: Right. So there were two sets of record
6 inspections being conducted of Ackerman McQueen in 2018 and 2019.
7 One had to do with this insurance lawsuit. And one -- the one
8 that FRA was involved in had a broader scope.

9 So -- and actually, Your Honor, there was not just the
10 insurance lawsuit, there was an insurance investigation by the
11 New York regulator that overlapped with the same documents.

12 THE COURT: But that wouldn't have anything to do with
13 it being prepared in anticipation of litigation for --

14 MS. ROGERS: Well, respectfully, Your Honor, our
15 position is that it does, because the NRA has to assess the
16 contents of these documents to form its litigation strategy. And
17 the Work Product Doctrine is clear that --

18 THE COURT: By that -- by that measure, then, an
19 attorney always has to assess the evidence before determining his
20 or her litigation strategy, but that evidence is not work product
21 always.

22 MS. ROGERS: Certainly, Your Honor. But if I hire an
23 accountant to help me sit down and go through records so I can
24 determine what claims I want to bring, the documentation of our
25 meeting would, I think, under any standard or in any circuit be

1 subject to the Work Product Doctrine. Those are attorney mental
2 impressions, that's litigation strategy, and here this -- this is
3 what FRA was engaged for. And we cite several cases in our
4 briefing that establish -- and I don't even think really that
5 Ackerman would dispute -- that the Work Product Doctrine extends
6 not just to the attorney's own files, but to any document
7 prepared by or for a party or its representative. So you don't
8 need to be a lawyer to generate documents covered by the Work
9 Product Doctrine.

10 THE COURT: I understand that. But it still has to be
11 in anticipation of -- of litigation.

12 MS. ROGERS: Right, Your Honor. And the standard for
13 anticipation of litigation in the Fifth Circuit -- and I
14 apologize, I'm recalling this from memory, but I think our
15 briefing would support it -- is that but for the prospect of
16 litigation this document wouldn't have been prepared. So it
17 can't be something you would have prepared in the ordinary course
18 of business that might have to do with a lawsuit some day, it's
19 you're getting ready for litigation or you think you might have
20 to litigate, and so you engaged in this analysis and you prepared
21 these materials.

22 And the record of FRA's engagement is clear that that's
23 what the NRA was doing. The NRA was already engaged in one
24 Government investigation, facing a second potential Government
25 investigation, and engaged in two pending lawsuits that had to do

1 with these documents.

2 THE COURT: Mr. Mason, I interrupted you. You can go
3 ahead.

4 MR. MASON: Thank you, Your Honor. I was -- and I
5 touched on this briefly that one of the other issues -- one of
6 the other waiver issues is the selective waiver of the privilege
7 and it touches on the fact that we've been dealing with -- with
8 these -- these disputes, and the NRA has taken a firm position on
9 it for a while and then kind of at the 11th hour decided to
10 strategically produce some of these documents. Here's some case
11 law relating to that. This is in our brief.

12 This was at the -- this was at the hearing before Judge
13 Fish in -- I believe it was September, the status conference
14 regarding discovery. And prior to that time we had had no
15 discussions at all about -- any more about the FRA issue, the
16 audit. Ms. Rogers and I had not discussed it. As far as we were
17 concerned that issue was -- was teed up for the Court. And we
18 were -- you know, we expected that the Court would address it and
19 that -- and that was the end of it.

20 But during that hearing Ms. Rogers -- Ms. Rogers
21 brought up that the NRA generated a report with its findings and
22 that we're willing to produce it. We think it's privileged, but
23 if there's a stipulation that it's not a subject matter waiver,
24 we'll give it to them.

25 We subsequently -- and I really -- again, I can't

1 stress the amount of like time and money and hoops that have been
2 jumped through before this was even discussed, because this
3 started two years ago. Had been through numerous iterations in
4 different courts, different briefing, and now this is just thrown
5 out of left field at this particular hearing.

6 But after this we did have numerous discussions
7 relating to the FRA documents and ultimately we said no. We said
8 you can't just selectively produce documents when you think it's
9 convenient and when you think it's convenient for you and we're
10 not going to agree to that. We're not going to agree that it's
11 not a subject matter waiver. You need to produce everything with
12 respect to the audit.

13 And so what did they do? They ignored -- they ignored
14 what we said. This is an e-mail from Ms. Rogers where she
15 indicated that the NRA has now requested that FRA produce these
16 draft reports and that we're going to provide them to our
17 experts. So they -- they disclosed it at the hearing. They said
18 if we can reach an agreement we'll do it. We said no. And they
19 said, okay, we're going to do it anyways. We're going to make
20 the decision that we're going to produce them and we need to
21 provide them to -- to our experts.

22 And so this is important context, Your Honor, because I
23 don't want -- the issues that they have raised is, you know,
24 Ackerman McQueen is burdening the Court with additional briefing,
25 additional supplemental briefing on this whole FRA thing. Had

1 this not happened, we would not have had that supplemental
2 briefing that occurred in the last -- in the last couple of
3 months, but we thought that this was important enough and a clear
4 selective waiver with respect to the -- to the decision that the
5 NRA made that we needed to bring it before -- before Your Honor.

6 In their response to our supplement, they said that the
7 NRA made no use of the FRA's spreadsheets other than providing
8 them to its testifying experts. And that none of the NRA's
9 pleadings quote, cite or mention privileged -- or documents
10 logged as privileged. They're not relying on any of the FRA
11 opinions or work products or any facts regarding its claims or
12 defenses in this case. That was on November the 12th.

13 On November the 29th, what is that, 17 days later, they
14 file a motion for partial summary judgment. And this is what I
15 was referencing earlier, attaching these reports and filing them
16 in the -- in the public record in support of -- of their motion
17 for -- for summary judgment.

18 And so this whole issue of we're not relying on them,
19 there's no reports, we believe that has significantly changed.
20 And the end result is that they made a strategic litigation
21 decision. This is an issue that we've been going back and forth
22 on for a while. They knew we were not agreeable. They knew this
23 was going to be an issue. They knew we were going to bring it
24 before Your Honor. And we believe that the ultimate result of
25 their conscious and strategic litigation decision here is that

1 they have waived the privilege with respect to these FRA
2 documents.

3 Finally, I know one of the other things we talked about
4 with respect to the FRA is the -- is the Crime-Fraud Exception.
5 We talked about that earlier. This goes back to Mr. La Pierre's
6 representations that were made at the October 11, 2018 meeting
7 and the involvement of the Brewer firm going forward and
8 specifically Ms. -- Ms. Dillon's role and involvement with
9 respect to the FRA audit.

10 So, again, we don't believe that these documents are
11 privileged, but to the extent that the Court does believe that
12 they are, we believe that that privilege has been waived because
13 of the Offensive Use Doctrine, because they made a strategic
14 litigation decision and selectively decided to produce some of
15 these, and also because we believe the Crime-Fraud Exception
16 applies here.

17 THE COURT: Let me ask you, Ms. Rogers, regarding what
18 you've refused to produce, I mean, are they -- are you claiming
19 that what you've refused to produce are not parts of these draft
20 reports from FRA and are actually something else?

21 MS. ROGERS: That's correct, Your Honor. So these
22 spreadsheets, whether you call them reports or you call them
23 spreadsheets --

24 THE COURT: Are they something different than the
25 spreadsheets that you --

1 MS. ROGERS: Yes. Yes. Sorry, Your Honor. I didn't
2 mean to interrupt you.

3 THE COURT: So what I'm asking you is you obviously
4 have used some of those spreadsheets. Was this all a one-thing,
5 a draft spreadsheet document and you've chosen to use parts of it
6 and are still withholding other parts of it?

7 MS. ROGERS: No, Your Honor. So in our motion for
8 summary judgment we cite maybe two sentences of one of the
9 spreadsheets. These are huge spreadsheets and we produced the
10 entire thing.

11 So we -- basically FRA transcribes and summarizes data
12 its shown and then it has bullet points summarizing here's what
13 we asked for, here's what they gave us. Those bullet points are
14 what we cited in our motion, but we don't just produce the part
15 we cite. We produce the entire document. It would be huge if
16 you printed it out. There's tabs of data under it. Ackerman has
17 the whole thing.

18 THE COURT: So what else, then, Mr. Mason, even though
19 it wasn't produced in response to the discovery motion, but -- I
20 mean, in response to the discovery motion, but what else are you
21 contending is out there?

22 MR. MASON: Well, I think -- I mean, for one we don't
23 know when these were actually prepared. We don't know who
24 prepared them. We don't know what the input was at the Brewer
25 firm. We don't know if they're corresponding with FRA saying,

1 you know, hey, be sure you put this in the report, you know, or
2 whatever. We don't know. We don't know, Your Honor. What we do
3 know is that there are --

4 THE COURT: You're not going to get that from the
5 production of the documents anyway, even if they were to have
6 turned over the entire forensic documents to you or the
7 spreadsheet or whatever it's called. Even if they were to have
8 turned that over to you, those are questions that you might ask a
9 witness, you know, in a deposition or otherwise or some
10 interrogatory, some way to question about those things. But the
11 documents themselves is what this motion to compel appears to be
12 based on, and I'm trying to figure out what documents are you at
13 this point contending you've not been -- you've not had access
14 to.

15 MR. MASON: Well, it's with respect to all of the
16 documents that are -- have been -- the 1,600 documents that have
17 been logged that relate to this particular audit.

18 THE COURT: Do I misunderstood, then, what Ms. Rogers
19 is saying, is that at the point that they point -- or referred to
20 the bullet points they gave the entire documents, including those
21 1,600?

22 MR. MASON: No. No, Your Honor. There are 1,600
23 separate documents that is, you know, for example, communications
24 and we obviously don't know what they say. The FRA privilege log
25 I know is part of the record. I can give you a cite. But it's

1 that the six documents, I think, Your Honor has questioned, those
2 do not encompass the 1,600 documents. I mean, I'm not even sure
3 they encompass a fraction of it. I think those are just kind of
4 these reports that were apparently prepared at some point in time
5 by who knows -- you know, who knows when, who knows who was
6 involved in the preparation of them.

7 And our understanding is that the -- the communications
8 that have not been provided would be everything -- at least -- at
9 the very least everything kind of surrounding those.

10 Also, you know, the Brewer firm conducted this audit
11 in -- in September of 2018 and they were obviously communicating
12 with -- with FRA and Ms. Dillon about what they were seeing and
13 what you guys should be looking for. And so those are the kinds
14 of things that we believe are being withheld and that are not
15 part of just these six particular documents.

16 THE COURT: Okay. I'm going to -- it's very difficult
17 to make a decision about documents when it's hard to know what
18 they actually are. And so I'm going to require that the
19 documents being withheld be provided to the Court for in camera
20 inspection, and I'll make a determination upon inspection whether
21 or not they are privileged and if they are privileged whether the
22 privilege has been waived as to the specific documents that are
23 being withheld. So, Ms. Rogers, when can you produce those?

24 MS. ROGERS: I would say next week at latest,
25 Your Honor.

1 THE COURT: Okay. Well, by the end of next week, then,
2 if you will at least do that. And you're saying that the
3 privilege log that actually would apply to them is already the
4 one that's in the record.

5 MS. ROGERS: That's correct, Your Honor.

6 THE COURT: Okay. All right, then. Let's look at --
7 let's look at the -- let's see. NRA's motion to compel -- compel
8 documents withheld by -- withheld by AMC on the basis of
9 privilege. Are you -- are you ready to talk about that, Ms.
10 Rogers?

11 MS. ROGERS: Your Honor, I appreciate the opportunity
12 to address it. You know, we did think this hearing was
13 addressing two other motions and so in the interest of fairness
14 it would be ideal for us to address them at another date. That
15 said, if Your Honor is poised to rule, I obviously wouldn't want
16 to forfeit the opportunity to give input, so --

17 THE COURT: Go right ahead.

18 MS. ROGERS: Okay. So, Your Honor, as we cited in our
19 briefing -- and apologize, I don't have it in front of me, but
20 it's in the record and I'm sure the Court has reviewed it, a
21 party that doesn't log documents as privileged forfeits any claim
22 of privilege. And this is especially true when the parties had
23 one chance, two chances, three chances to amend its privilege
24 log. These parties have been engaged in discovery since November
25 2019 and discovery was extended by Judge Fish for the final time

1 this fall.

2 And over the course of that period the NRA has
3 repeatedly served document requests that implicate a specific
4 time period, 2015 to present, and implicate like a list of topics
5 that we served document requests targeting.

6 And we received a privilege log from Ackerman, which
7 over the summer we began to note looked deficient. There were
8 documents that were missing from both the log and the production
9 and we couldn't figure out what they were or where they were.
10 And there was extensive meet and confer letter correspondence
11 addressing this.

12 And finally the discovery deadline was extended, but
13 before the discovery deadline was extended it appears the
14 defendants wanted to run out the clock and just did not
15 supplement their log and didn't produce anything. But after the
16 deadline is extended they agreed to play ball with us sort of and
17 they amend the log for the first time, still not addressing any
18 of our concerns.

19 And what are our concerns? I'm happy to recap them.
20 So there are documents on key topics that are simply missing from
21 the log. For example, there's a pivotal letter received by the
22 NRA in August of 2018 that says, look, Ackerman keeps all the
23 records it would be required to keep under federal tax law and
24 applicable nonprofit law. We're doing everything perfectly. You
25 don't need our documents. And by the way if you've got them

1 there would be a paper trail a regulator could subpoena, so you
2 should -- you should -- you know, you should stop trying to turn
3 over rocks and look at documents. That is a letter sent by
4 Stephen Ryan at McDermott, Will & Emery. And if memory serves,
5 the date on that letter is August 22, 2018.

6 So that's a very important letter, essentially giving
7 us all the assurances that -- or many of the assurances that are
8 in our fraud claim. There's nothing on the privilege log about
9 that letter. Very odd. There's almost nothing on the privilege
10 log about NRA TV. There's almost nothing on the privilege log
11 relating to some of the other documents and events that we know
12 exist.

13 And so we write to Ackerman and we have several meet
14 and confer calls and we've been given by Judge Fish this very
15 firm and circumscribed window in which to conduct any outstanding
16 discovery. And we say look, you know, it seems like we're going
17 to have an issue on privilege, so why don't we just agree to do
18 simultaneous -- like simultaneous joint submissions which will
19 get this teed up before the Court before the discovery period
20 ends. Ackerman says, no, we want to do staggered briefing. And
21 by the way, we're going to amend our log again. We promise we'll
22 have our next amendment next week. We get that for two weeks in
23 a row. Finally as the discovery period closes an amended log is
24 served on us and we discover for the first time the vast majority
25 of documents that Ackerman is withholding. And when I say

1 Ackerman, they furnished a log, but it's on behalf of all
2 defendants.

3 The vast majority, roughly -- I think it's roughly 75
4 percent of the documents the defendants are withholding they
5 don't tell us about in 2019 when they first review documents,
6 they don't tell us about in the summer of 2020 when we first
7 begin to follow-up with them, and they don't tell us about when
8 we start meeting and conferring in earnest after we emerge from
9 bankruptcy this summer and the Court has indicated the discovery
10 time is running out. The vast majority of the documents that
11 they have withheld are secret until the final days of the
12 extended discovery deadline, which is pretty unacceptable,
13 because we have a number of issues with how these documents are
14 logged and whether they privileged in the first place and we have
15 been given no opportunity to contest them.

16 So, Your Honor, we think the fact that these
17 documents -- we weren't told about them when we first engaged in
18 discovery, we weren't told about them when the log was furnished,
19 we weren't told about them during our first and second iteration
20 of meet and confer. We're only told about them at the very last
21 minute. That in and of itself is a waiver.

22 But there are other reasons that we're entitled to
23 these documents. So there are documents on this privilege log
24 for which, you know, no connection to legal advice is
25 articulated. And there are documents on this privilege log,

1 which I believe we covered in our briefing, that we know are not
2 privileged, because we have copies of them and copies of related
3 e-mail chains.

4 So, you know, with that, as I mentioned, Your Honor,
5 we -- I didn't come prepared with a Power Point on this or
6 anything, but --

7 THE COURT: Let me ask you this: Maybe -- maybe I
8 could ask you a couple of direct questions.

9 MS. ROGERS: Okay.

10 THE COURT: So the documents that you have that now
11 they're claiming privilege over, but you already have them, what
12 is the dispute?

13 MS. ROGERS: So with respect to those specific
14 documents, you know, we already have them, so obviously we're
15 content to use them. But we think that this sort of indicates
16 that not every privilege claim is well founded and there are a
17 bunch of documents that we can't see that we think -- or that we
18 think the privilege assertion is similarly deficient, and this
19 is -- this is one consideration at minimum that favors in camera
20 review, if not a wholesale turnover of these documents.

21 THE COURT: So you -- you generally are objecting
22 without -- I mean, are you saying the privilege log was
23 insufficient in that it's supposed to identify some -- with
24 enough specification that you're able to determine whether or not
25 you should -- you want to object to it? You're saying that it's

1 not sufficient as to the documents that were originally listed on
2 the privilege log in that respect?

3 MS. ROGERS: That is certainly one concern that we have
4 articulated. And, you know, the Fifth Circuit has, you know --

5 THE COURT: Are there any -- are there any specific
6 documents on the original or entries on the original privilege
7 log that you've identified as insufficient to determine whether
8 or not you should challenge the privilege?

9 MS. ROGERS: Certainly, Your Honor. And just to be
10 clear, when you say original, do you mean the log that's now
11 before the Court or the very first one they gave us?

12 THE COURT: Well, it sounds like -- and I hadn't gotten
13 to that, but it sounds like you're also arguing that their
14 current privilege log is untimely.

15 MS. ROGERS: Yes.

16 THE COURT: Am I understanding that? So --

17 MS. ROGERS: And that it's not privileged. That's
18 correct, Your Honor. So let me address the original privilege
19 log. And as I'm addressing it I will make an effort to pull it
20 up so I can cite specific entries. But there are entries on
21 there that don't say whether anyone is seeking legal advice,
22 don't say whether anyone is providing legal advice. Sometimes
23 some of these entries just say forwarding attorney/client
24 communications, some of them say upon advice of counsel. So
25 you'll have one Ackerman employee e-mailing another Ackerman

1 employee and it just says communication upon advice of counsel.
2 But as we all know, doing something because your lawyer told you
3 to is different from seeking or requesting legal advice. So we
4 don't think those were adequate.

5 We had an issue with -- you know, a privilege log
6 traditionally is supposed to entail some sort of subject matter
7 description, so that if from the subject line of the e-mail -- if
8 the subject line just says re, for example, you can't tell what
9 the e-mail is about, so it's hard to assess the claim of
10 privilege and we don't think that the purpose of a privilege log
11 is satisfied with that issue.

12 And I can -- I apologize, Your Honor, for any delay.
13 I'm happy to sort of pull up what we have disputed. There are
14 other e-mails on the original previous log, Your Honor, that
15 don't have attorneys on them and don't provide any information
16 sufficient to assess -- given that those there are no lawyers
17 here, how is that document privileged? So that was an issue.

18 There are assertions of the Work Product Doctrine for
19 which no anticipation of litigation is alleged. That's the core
20 element of the Work Product Doctrine and the privilege log
21 doesn't say it or doesn't provide information sufficient to infer
22 it. Like if the subject line of the e-mail was something like
23 potential lawsuit, okay, but --

24 THE COURT: Let me -- let me -- let me say to you that
25 I'm having no problem with you looking at their privilege log and

1 objecting to something being listed on that log when the
2 description doesn't support privilege or work product. That's
3 what the point of the privilege log is.

4 My concern is that -- you know, sort of a wholesale the
5 privilege log is not sufficient and, therefore, we should have it
6 kind of thing.

7 I'm -- I'm fine with the specific examples that -- you
8 know, that you're giving and the reason that you would naturally
9 have an objection to those. But it's the -- you know, it's the
10 basically we just know everything is bad because these are bad
11 kind of argument that is causing me some difficulty, especially
12 from the position of one who might have to look at them.

13 MS. ROGERS: I understand, Your Honor, and I appreciate
14 you don't want to do in camera review everything.

15 THE COURT: Yes.

16 MS. ROGERS: I mean, I think we do cite laws, the fact
17 that just -- you know, you had one chance to amend, you had two
18 chances to amend. If you don't timely assert your privilege
19 objection by then, if you don't timely --

20 THE COURT: Well, usually you're amending because
21 somebody has pointed out that you were deficient.

22 MS. ROGERS: Right.

23 THE COURT: Okay. So, you know, just the fact that
24 time is going on is not, you know, raising the -- raising the
25 requirement, so to speak, of having to, you know, amend, you

1 know. You had all this time and you could have already done it
2 isn't the same as, you know, your privilege log is insufficient
3 in this way --

4 MS. ROGERS: Certainly.

5 THE COURT: -- and then you don't. And then you don't.
6 And then you don't.

7 MS. ROGERS: Certainly, Your Honor. So I would only
8 point out that it's not merely the passage of time. We're not
9 just saying this log was sitting out here deficient for a year
10 and they didn't do anything about it. It's that the log was
11 sitting out there for a year. The log that we didn't get until
12 one week before the expiration of the extended discovery window.
13 So if Judge Fish hadn't extended the discovery window, the vast
14 majority of these purportedly privileged documents would be --
15 their existence would be a complete secret.

16 They didn't produce them. They didn't say they were
17 withholding them. Most of these documents just completely fell
18 through the discovery cracks. You know, they claim this was good
19 faith mistake. We think the record is a little ambiguous on
20 that. But that's a pretty extraordinary deficiency in and of
21 itself.

22 So -- but it's not -- it's not just that we didn't
23 learn about most of the purportedly privileged documents until
24 late October after the final-final discovery deadline was upon
25 us, it's that we didn't learn about them until late, late October

1 despite just months and months of going back and forth. This
2 privilege log looks wrong. What's wrong with it? Why are there
3 so few documents? We have 6,000 documents. Why do you only have
4 a few hundred? Where is the Stephen Ryan letter? Where is the
5 NRA TV documents?

6 And then the fact that, you know, we're led down the
7 primrose path and told for like two weeks in a row like don't
8 worry, we're going to amend the log and resolve everything,
9 you're going to get it next week, you're going to get it next
10 week and then we don't get it, you know, we're not really left
11 with a lot of time to go through their now -- like I think it's
12 like 1,400 documents they have now logged and come up with a
13 particularized objection to every single one of them, because
14 this is dropped on us after discovery is supposed to have been
15 over for two months or three months actually.

16 So it's not just the time elapsed, it's not just that
17 the log was sitting out there being deficient, it's that we were
18 trying and trying to get an adequate log out of them and didn't
19 and then we get -- the vast majority of the documents are sprung
20 on us at the end. And we just don't -- as a matter of fairness
21 we think that in camera review or disclosure would be one way to,
22 you know, remedy that.

23 And if Your Honor would like -- if Your Honor were
24 considering in camera review of a portion, you know, we'd be
25 happy to do also by next week, is give you a more particularized

1 list of documents that we really do think are crying out for in
2 camera review. And this is something we would have done prior to
3 the 29th if we had -- if the vast majority of the log documents
4 had not been sprung on us months after the close of discovery.

5 THE COURT: And, you know, I can give you that time. I
6 can -- I can give you that time to do that. But first let me
7 hear Mr. Mason's response.

8 MR. MASON: Sure, Your Honor. And I -- I do have
9 another -- I promise this Power Point is a little bit shorter.
10 There's some other issues that were raised in their motion that
11 Ms. Rogers didn't necessarily touch on. I do want to address
12 those briefly with the Court, if I can.

13 THE COURT: Let me ask you, Ms. Rogers, if the Court is
14 considering your proposal to identify specifically based on the
15 new log those documents that -- that you're requesting in camera
16 inspection of because you believe that the description of them is
17 deficient to establish that they would be either work product or
18 attorney/client privilege -- what about all those other things
19 you're asking? I mean, are they moot at that point?

20 MS. ROGERS: Well, Your Honor, obviously we wouldn't
21 want to waive or prejudice our rights. I mean, we filed a motion
22 for all of these documents and we'd like them. But, you know, if
23 we were exploring potential compromised positions, that's just
24 one that occurs to me.

25 I also would like to note -- and I apologize for not

1 noting it earlier, but, you know, this issue did come up at the
2 September 16th hearing before Judge Fish. We raised it then too.
3 So, again, this is not just a situation where time has passed,
4 it's a situation where the deficiencies in the log have been
5 noted and noted and noted, and Ackerman just kind of brushes them
6 off until days before discovery ends.

7 THE COURT: But that's not helping me figure out where
8 we stand.

9 MS. ROGERS: I understand.

10 THE COURT: I know you want to throw that in there and
11 I appreciate it, --

12 MS. ROGERS: I'm sorry.

13 THE COURT: -- but I'm really trying to see where we
14 stand as far as what you've requested at this point.

15 MS. ROGERS: Your Honor, can I have a moment to confer
16 with my colleague just a second? I'm sorry.

17 THE COURT: Yes.

18 (Pause.)

19 MS. ROGERS: Thank you, Your Honor. And I'm sorry for
20 the delay. So we think with respect to documents that are
21 logged, that compromise I just proposed would resolve our motion.
22 That is, we give you next week a list of things we really want
23 you to in camera review to solve the available log.

24 The only -- the only place that that falls short, the
25 only problem with our motion that would not resolve, is there are

1 still documents that we think the defendants are withholding that
2 they haven't logged at all. We -- we know that there
3 are documents --

4 THE COURT: Well, that's something different, though.

5 MS. ROGERS: Yes. Yes, Your Honor. So with respect to
6 the documents on the log, that would resolve our motion.

7 THE COURT: Okay. So, I mean, you know -- and
8 unfortunately we get this all the time that we think they're
9 withholding documents and -- we think they're just withholding
10 documents. I mean, do you, you know --

11 MS. ROGERS: Do I think that they exist?

12 THE COURT: Yes.

13 MS. ROGERS: Yes. So here's why I think they exist and
14 I don't think Mr. Mason will deny it. We know there are going to
15 be documents after April 2019 that are responses to our requests
16 and are -- are not being produced to us presumably on the grounds
17 of privilege. The previous log cuts off April 2019.

18 THE COURT: Why is that, Mr. Mason?

19 MR. MASON: Your Honor, it's because litigation between
20 the parties started in April of 2019. And -- and if I can, one
21 of the -- one of the issues that they did move on is -- and
22 Ms. Rogers is right, there are some documents we believe that we
23 have asserted objections or don't have an obligation.

24 But essentially what I think they're asking for, at
25 least in their reply, is that with respect to post April 2019

1 post litigation between the parties, we think that they're
2 essentially asking the Court to find a blanket per se waiver
3 that because you guys didn't do any kind of log that you have to
4 turn over, you know, literally every single attorney
5 communication and attorney work --

6 THE COURT: I've already told you my opinion on that,
7 so we don't have to -- we don't have to beat that horse. But
8 what I'm -- but what I'm trying to find out from you is -- and
9 you've told me -- is that you believe everything that would have
10 been responsive is -- is not responsive because the lawsuit was
11 filed?

12 MR. MASON: What I'm -- so what I'm saying, Your Honor,
13 is between January -- I believe it's January of '18 and April of
14 2019. I believe that we have logged all of the documents that
15 we -- that are responsive and that we're withholding on the basis
16 of privilege and including in our -- in our latest log. And I
17 know that's what we've been discussing.

18 What I am saying is that there are certain documents --
19 well, first of all, with respect to pre 2018 documents, I'm not
20 even sure that there are any responsive privileged documents, but
21 we have not logged those, because we asserted objections and we
22 don't believe that -- that those are relevant and we had a
23 requirement to do that.

24 The same goes for --

25 THE COURT: You don't have a requirement to -- tell me

1 again what you mean?

2 MR. MASON: Well, we asserted objections regarding the
3 scope of their -- of their discovery requests. And I know this
4 gets into their kind of motion to compel in terms of like the
5 time period. We asserted certain objections to the time period
6 of responsive documents and I know that touches on another issue.
7 But there are -- well, there may be certain documents that are
8 pre 2018 that are not on the log. I am certain that there are
9 likely attorney/client and documents post April of 2019 after the
10 litigation began. And, again, the original lawsuit --

11 THE COURT: Do y'all have some kind of agreement to
12 limit the scope of their request to January -- or whatever it
13 was -- 2018 up to April of 2019?

14 MR. MASON: We have not -- we have not -- there was an
15 agreement with respect -- in the Virginia case with respect to
16 2018. That's kind of how that 2018 came into the -- into the
17 Texas case. Because, again, the first lawsuit -- this all began
18 in April of 2019 up in Virginia. The NRA filed its first lawsuit
19 in April. There was another lawsuit that was filed in May of
20 2019. Ackerman filed counterclaims. This Texas lawsuit was
21 filed and the NRA filed a fourth lawsuit in Virginia in 2019.

22 And so in our original log that we did in December we
23 did not log documents that were after the commencement of
24 litigation. We didn't believe we were required to do that under
25 the -- under the law, because for a variety of reasons the

1 privilege is so obvious, it would be unduly burdensome. And --

2 THE COURT: The privilege is obvious before the
3 lawsuits were filed?

4 MS. ROGERS: No, after -- after the lawsuit, Your
5 Honor.

6 THE COURT: Okay. I thought you were talking about
7 before.

8 MR. MASON: After -- after the lawsuit. I'm talking
9 about post April of --

10 THE COURT: I thought you were talking about pre 2018
11 and it was sort of like you switched. That's why I asked you
12 that question.

13 MR. MASON: And I apologize if I was confused or going
14 back and forth. But with respect to post April 2019, we do not
15 believe that we have an obligation to log post litigation
16 communication --

17 THE COURT: Let me ask you this: Do you contend that
18 you do not have documents that would be otherwise responsive that
19 are post April 2019?

20 MR. MASON: I want to be sure I understand the
21 question. Is it -- is the question would there -- do I know if
22 there are responsive documents --

23 THE COURT: Documents --

24 MR. MASON: -- post April of 2019 that are solely being
25 withheld on the basis of privilege?

1 THE COURT: No, I'm just asking you are there any?

2 MR. MASON: Are there any -- well --

3 THE COURT: Post April 2019 documents that are
4 responsive and that you -- you agree are responsive to their
5 requests?

6 MR. MASON: There are -- I believe there are some and I
7 believe we've produced those. We have produced some documents
8 after April of 2019.

9 THE COURT: But you are saying you withheld some
10 documents after 2019, but you did not provide a privilege log.
11 You withheld them on the basis of privilege, but you did not
12 provide a privilege log.

13 MR. MASON: I haven't looked through all of them, but I
14 do believe that there are documents. Given the 300 requests for
15 production that -- that we received in this case from the NRA,
16 I'm certain that there's probably a privilege -- there are
17 privileged documents that are post April of 2019.

18 THE COURT: Well, then your -- your explanation for why
19 you haven't produced a privilege log for them falls flat, because
20 you've already said there were responsive documents during that
21 period that you did produce. And you're admitting that you
22 withheld some other documents that would be responsive during
23 that period that you already produced documents for for post
24 April 2019 that you withheld on the basis of privilege, yet you
25 did not produce a privilege log. And so you saying that it's

1 post that and so that necessarily it's going to be means nothing
2 to the rules that require you when you're withholding something
3 based on privilege to provide a log.

4 MR. MASON: Well, again, Your Honor, to the extent that
5 a log was required, we believe that there is ample case law out
6 there that suggests you don't need to log communications post --
7 post litigation. And here's a few of those cases. And I'm happy
8 to provide those to --

9 THE COURT: When you're providing an Eastern District
10 of New York case that says that, it isn't helpful to me.

11 MR. MASON: Sure.

12 THE COURT: Is there something within the Fifth Circuit
13 that said that?

14 MS. ROGERS: Well, I have not found anything --
15 there's -- there's not a case that's cited that suggests that a
16 failure to log privileged documents after the commencement of
17 litigation is a blanket per se waiver and everything needs to be
18 produced. I mean --

19 THE COURT: Well, we're not talking about any remedy at
20 this point, we're talking about the obligation at this point.
21 Because, you know, I could decide that you need to go do the
22 privilege log so that we can have a meaningful discussion about
23 it, you know, --

24 MR. MASON: There is case law in the --

25 THE COURT: -- if you're withholding something.

1 MR. MASON: I'm sorry, I didn't -- I didn't catch that,
2 Your Honor.

3 THE COURT: I said if you're withholding something,
4 which it sounds like you are.

5 MR. MASON: There is case law. This is the *Benson* case
6 that is the Eastern District of Louisiana that talked about it
7 was not necessary to log documents after the commencement of
8 litigation.

9 THE COURT: No, it's not necessary to log every work
10 product communication after litigation. Okay. It's not every
11 work product communication. But what you're saying is there are
12 some -- you know, how -- how do -- how do they decide what's --
13 and that's what I pointed out when I was talking with Ms. Rogers
14 or questioning her. How did they decide whether or not they want
15 to object to your claim of privilege or work product if they
16 don't have enough information -- which is the whole point of the
17 rule and the law -- enough information to do it? I don't know
18 what the situation was there in *Benson*, you know. You know,
19 maybe they just summarized it and said that post litigation
20 every -- we have those documents, that all they are are
21 communications between our attorneys and our -- and the clients
22 post litigation. And it could be a summary. It wouldn't have to
23 be every individual thing, but it would be --

24 MR. MASON: Well, and, Your Honor, I mean, this is not
25 an issue that -- because we did search for the law and they

1 haven't cited any in the Fifth Circuit. And as Your Honor
2 pointed out before, the purpose of the log is to test the
3 privilege. But since litigation has commenced there's -- and
4 there is case law about there not being a material benefit to the
5 requesting party, because it's so obvious that the communications
6 are -- are privileged. I mean, that's why you don't see
7 itemized, you know, privilege logs after the commencement of
8 litigation.

9 THE COURT: I have. I have. You know, especially when
10 that period is one when you say there are materials that are
11 nonprivileged that are responsive, you know.

12 MR. MASON: Well, and I'm saying there that I believe
13 that there probably are, I mean, but I -- I don't know that for a
14 fact. I believe that there probably are. But to the extent
15 that -- to the extent that the Court is inclined to grant relief
16 with respect to this, I mean, I would -- I would request that we
17 be permitted to provide a categorical privilege log and that the
18 request for -- essentially the draconian relief about a blanket
19 literally produce everything that's privileged --

20 THE COURT: Well, we're not talking about. You keep
21 coming back to that and I said that's not what I was considering.
22 I was actually considering what you said, is that you -- about
23 requiring you to produce a privilege log that is more
24 encompassing so they can determine whether there's anything there
25 to challenge.

1 MR. MASON: And we can do that. Well, we can do that,
2 Your Honor. I would ask -- for post litigation privileges,
3 though, I would -- I would request that we be permitted to do
4 that on a categorical basis, because, again, there was numerous
5 law firms that were involved. There was four lawsuits that were
6 ongoing in 2019 and -- and I will endeavor to make that as
7 categorical and as detailed as possible, but I would request that
8 the Court permit us to do a categorical --

9 THE COURT: Well, let's see. We'll see -- we'll see if
10 it's sufficient. So you can go ahead and do that. When are you
11 gonna have that by?

12 MR. MASON: Your Honor, could we have -- can we have 21
13 days to do that?

14 THE COURT: Okay. When would that be? 21 days from
15 today. Okay? So let me ask you about this. Somebody is sharing
16 something and I don't think that they intend to.

17 Let me ask you -- let me ask you about this: As far as
18 the pre April 2019 documents that were not produced, once -- once
19 we get that list of the specific challenges from Ms. Rogers for
20 those that you've already listed on your new log, I'm likely to
21 request that those documents be turned over for in camera
22 inspection. How quickly can you do that after her specific
23 objections to those documents are filed?

24 MR. MASON: Your Honor, I guess it depends in part
25 on -- on when Ms. Rogers intends to do that. If it's in the next

1 week and where it falls on Christmas day, that may be more
2 difficult. Do we know when Ms. Rogers intends to provide that
3 list?

4 THE COURT: I guess -- I guess I'm more concerned as to
5 how -- how long it would take you to marshal some of the
6 documents that you have on your list.

7 MR. MASON: I would ask the Court for 14 days once we
8 receive the list from Ms. Rogers to provide those to the Court.

9 THE COURT: I'll give you -- I'll give you 21 --

10 MR. MASON: Thank you, Your Honor.

11 THE COURT: -- from the date that Ms. Rogers provides
12 that list.

13 So what else can we -- doesn't that take care of
14 everything for today pending -- pending the updated log, the
15 updated objections or the specific objections and the provision
16 of the documents for in camera inspection?

17 MS. ROGERS: Your Honor, there's one item it doesn't
18 take care of. So --

19 THE COURT: Okay.

20 MS. ROGERS: -- we talked about a log for documents
21 after the start of litigation. And we agree with Your Honor
22 that, you know, the log is appropriate. The NRA logged documents
23 after the start of litigation, so the defendant should too.

24 But there's another chunk of time for which they admit
25 they have not logged and that's pre 2018. And we met and

1 conferred on this over the summer and after Judge Fish extended
2 the discovery deadline, and we were told we were getting
3 responsive pre 2018 documents by the end of October. So they've
4 produced documents for that period and they have withheld some,
5 but they haven't logged them.

6 So in our motion we argue you've got multiple chances
7 to log, you know they're responsive, you've got to turn them
8 over, you have waived privilege. If Your Honor is not inclined
9 to find a wholesale waiver by virtue of their refusal to log,
10 then we would ask that in addition to the post 2019 that we get a
11 log of the pre 2018, because that's another big chunk of time and
12 they don't even have -- they don't even have the excuse there
13 that there was pending litigation and got stuff with litigation
14 counsel. It's just like these documents -- these like mystery
15 documents that they have no excuse for not logging.

16 THE COURT: Mr. Mason, that does bring me back to the
17 question I was asking you. You did kind of conveniently skip
18 over that, as I kind of mentioned, when you were arguing before
19 why you weren't logging the privileged stuff pre 2018.

20 MR. MASON: Well, I think, first of all, we did not say
21 that we were producing all documents pre 2018. We have
22 objections to that. We have -- and that's the subject of, I
23 believe, the NRA's motion to compel on certain document issues.

24 We have conferred with the Brewer law firm dozens of
25 times throughout the last year to narrow that issue about pre

1 2018 documents and we have agreed to produce tons. We have
2 produced thousands of pre 2018 -- pre 2018 documents.

3 I do not --

4 THE COURT: I guess the question, though, isn't what
5 you've produced, it's what you haven't produced and if you
6 haven't produced it because it would be otherwise responsive, but
7 you're basing your refusal on a privilege or -- a privilege.

8 MR. MASON: And I don't know -- I don't believe, but I
9 don't know that we are withholding any documents pre 2018 on --
10 on the basis of privilege. But I -- I am -- I can go back and
11 confirm that we --

12 THE COURT: Are you withholding any documents that
13 would otherwise be responsive on some other basis?

14 MR. MASON: Well, we -- on some other basis, yes,
15 Your Honor. I mean, some of the requests in this case -- again,
16 there's 300 requests for production and some of them are
17 unbelievably overbroad. It's essentially give us every single
18 document ever created in any way, shape or form pre 2018. And
19 we've said we believe that is completely overbroad and improper,
20 but we're willing to sit down and talk about what is it that
21 you're specifically looking for. An example of this is --

22 THE COURT: And is that in -- is that in -- that's not
23 in this motion.

24 MR. MASON: In the privilege motion?

25 THE COURT: Yes.

1 MR. MASON: It's not in the privilege motion. No, Your
2 Honor.

3 THE COURT: In the motion to compel. Have you sought
4 to compel -- another motion to compel, Ms. Rogers?

5 MS. ROGERS: Yes. Yes, Your Honor. So the pre 2018
6 document issue has been sitting out there for a long time. So we
7 served -- we first served discovery November 2019 and in
8 defendant's responses and objections there's a general objection
9 to producing anything pre 2018. There is an old joint status
10 report before Your Honor from October 2020 deals with that issue.
11 We asked that that general objection be overruled. It came up
12 again at the discovery conference convened by Judge Fish in
13 September and thereafter the parties never resolved the issue and
14 the remaining discovery --

15 THE COURT: Was that a status report before it was
16 clarified to you-all that I wouldn't be looking at a status
17 report unless it was attached to a motion? You know, I don't get
18 any notice of it unless you -- unless you ask for some relief.
19 Was that one of those? Because I don't see something back from
20 October that we haven't done.

21 MS. ROGERS: So, Your Honor, I apologize. I wasn't in
22 the case then and I'm checking right now, but I think it was
23 after the standing order telling us how to brief discovery issues
24 and I think we briefed it under that protocol.

25 MR. MASON: It's ECF, Your Honor. It's -- I apologize.

1 Bear with me. I'm looking at the wrong year.

2 THE COURT: This has been going on for quite awhile.

3 MR. MASON: It's -- Your Honor, it's ECF 180. And I
4 was involved in the case. And so, Your Honor -- Your Honor,
5 there was cross-motions to compel in early 2020. And Your Honor
6 entered an order, I believe it was in the summer of 2020,
7 essentially telling the parties like, look, plenty of time has
8 gone by. It looks like you've resolved some of these issues. Go
9 back to the drawing board and keep talking about these issues and
10 see if you can reach an agreement. And if there's anything
11 outstanding -- and I want you to comply with my discovery --
12 discovery protocol, and so we did that. And we had numerous
13 conferences with Michael Collins and Allegreto and other members
14 of the Brewer firm in 2020.

15 And then ultimately the parties -- there were some
16 issues that were not -- we couldn't reach an agreement on and
17 that is reflected in ECF 180. And with respect to the pre 2018
18 documents the NRA moved to compel pre 2018 documents, I believe,
19 with respect to RFPs one, two and four.

20 But we had numerous discussions with the NRA in the
21 summer of 2018 on this issue. We had additional -- I had
22 additional conversations with Ms. Rogers this fall about the
23 pre 2018. She provided another list of documents and categories
24 that -- that she was telling me, look, we want these pre 2018
25 documents. We went back and we agreed to produce those. That's

1 why we did do supplemental productions in kind of the last few
2 months.

3 And so we have endeavored and worked with them on this
4 particular issue. But that's a longwinded way of saying, Your
5 Honor, that that joint status report that the parties filed
6 in -- and I believe the reason it may not have been attached,
7 Your Honor, is because it was cross-motions where both parties
8 were seeking relief. But that's ECF 180.

9 THE COURT: Okay. Both parties were seeking relief,
10 but you're saying neither party asked for relief in the motion.
11 Is that what you're saying?

12 MR. MASON: What I'm looking at right now is I don't
13 know if -- the document is titled Joint Status Report in
14 connection with plaintiff's motion to compel and defendant's
15 motion to compel. But essentially this was the -- this was the
16 report that the parties jointly submitted after we went back to
17 the drawing board on both of our original motions to compel.

18 THE COURT: Okay. What happens is the original motions
19 were already determined. It was determined that you should go
20 back to drawing board and you should let us know if other issues
21 remain. So there was nothing out there for us to know that was
22 still pending unless you attach it to a motion. That's why later
23 on you were specifically told look at the scheduling order,
24 attach it to a motion so that we would get notice of it and know
25 that there was something you were seeking relief on. So even

1 though you're talking about it now, it's not something I have
2 even considered or even looked at, because I didn't know there
3 was an issue about it. So, I mean, we can take it up, but, you
4 know, we're not going to take it up now as far as the temporal
5 objections.

6 But more -- but specifically as to the attorney/client
7 privilege, we're taking care of that now. And, Mr. Mason, to the
8 extent that you withheld documents during the period pre 2018
9 that you withheld -- that would otherwise have been responsive,
10 but you withheld on the basis of privilege, you need to within 21
11 days provide a privilege log for those documents.

12 MR. MASON: Yes, Your Honor.

13 THE COURT: So -- and if we need to go back and look at
14 the argument from the pre 2018, prompt us to do it. File a
15 motion to compel. And you can go ahead and attach that joint
16 status report to it if you'd like. I mean, in other words, if it
17 already covers what it is you want to do, you know -- or, you
18 know -- then just -- just let us know we need to resolve it by a
19 motion.

20 MS. ROGERS: Thank you, Your Honor.

21 MR. MASON: Just so I'm clear, Your Honor, are you
22 inviting the parties to rebrief the issue if necessary at this
23 point or are you suggesting --

24 THE COURT: No, --

25 MR. MASON: Okay.

1 THE COURT: -- I'm not.

2 MR. MASON: Okay.

3 THE COURT: So I'm just trying to have a motion out
4 there for me to rule on and give notice of, because that's the
5 way I know that you have something pending.

6 So that sounds like it takes care of, at least for now,
7 that motion, the motion -- the motion to compel filed by the NRA.

8 MS. ROGERS: Yes, Your Honor. And just one small item.
9 Mr. Mason had asked for permission to provide a categorical log
10 rather than a document-by-document log. We would consent to that
11 with respect to documents post April 2019 that are communications
12 with litigation counsel about the litigation. But there are also
13 like business-related communications during that time that the
14 NRA logged document by document.

15 So, for example, even after litigation starts you have
16 NRA executives e-mailing Ackerman executives about
17 confidentiality, about returning our property. We think those
18 communication that aren't with Dorsey about the lawsuit need to
19 be logged.

20 THE COURT: Well, and I just assumed that when
21 Mr. Mason was talking he meant by categorical communications
22 between the attorneys and -- and, you know, the representatives
23 of the parties --

24 MR. MASON: Right.

25 THE COURT: -- that meet the definition of privilege.

1 And I thought that's what he meant, because that's what I meant,
2 Mr. Mason. Is that what you meant?

3 MR. MASON: That's my -- Yes, Your Honor.

4 THE COURT: Obviously you wouldn't just throw something
5 in there that didn't fit those parameters --

6 MR. MASON: Absolutely.

7 THE COURT: -- such as what Ms. Rogers is saying.

8 MR. MASON: Correct.

9 THE COURT: Then you'd be defeating the whole point of
10 doing a privilege log.

11 So I think we're straight on that.

12 MS. ROGERS: Thank you, Your Honor.

13 THE COURT: Let's look at -- do we have Mr. --

14 MR. QUINNETT: Your Honor, Mr. Quinnett is here.

15 THE COURT: Okay.

16 MR. QUINNETT: We have a windstorm in Oklahoma and I
17 had to -- I lost my electricity. And with your permission I
18 can't get video, but can we proceed this way?

19 THE COURT: Yes, we can go ahead and proceed this way,
20 because we want to go ahead and take care of the motion, --

21 MR. QUINNETT: Thank you, Your Honor.

22 THE COURT: -- the next one I was going to call and
23 it's the one I'm about to take up. And it's the one -- HBC CPAs
24 and Advisors' motion to quash the third-party's subpoena.

25 MR. QUINNETT: Yes, Your Honor.

1 THE COURT: So let's get into that. And it sounds
2 like -- it sounds like the NRA and AMC have different arguments
3 than what HBC has regarding the subpoena. Different -- different
4 concerns about it.

5 So Mr. Quinnett, if you want to go ahead, --

6 MR. QUINNETT: Yes, Your Honor.

7 THE COURT: -- we can discuss your position first.

8 MR. QUINNETT: Thank you. HBC is a CPA firm, I'm sure
9 you know that, and we perform audit services and have in the past
10 for Ackerman McQueen. The NRA provided us a third-party subpoena
11 in July of 2020. And, Your Honor, we -- I conferred with
12 Mr. Mason in the last couple of days and we presented -- there
13 were four things -- four main topics that the NRA was requiring.
14 I conferred with Mr. Mason, put together a document and it sounds
15 like we're in agreement on three of the four. Ms. Rogers,
16 Mr. Mason and HBC are in agreement on three of the four.

17 THE COURT: Okay.

18 MR. QUINNETT: And there was one that was sort of at a
19 late date that we didn't quite iron out. So there's one that's
20 kind of outstanding and Mr. Mason and I haven't had a chance to
21 talk about it yet. But I think we're close.

22 THE COURT: Are you thinking that you will be able to
23 resolve it and you won't get -- won't require Court intervention?
24 Is that what you're -- what you're suggesting or stating?

25 MR. QUINNETT: With your permission, Your Honor,

1 there's one large -- we agreed on three of the four. The fourth
2 one -- Ms. Rogers had four points -- four separate document sets
3 I would say that she wanted. And I think we're in -- I don't
4 want to speak for Mr. Mason, but I think for HBC we'll agree to
5 three of those four. There's one larger one that I think we want
6 to hear from Ms. Rogers on why she would want those documents.

7 THE COURT: Which one is that?

8 MR. QUINNETT: Yes, Your Honor. It's number four in
9 the subpoena that --

10 THE COURT: What's the subject matter? Because I don't
11 have it listed by number.

12 MR. QUINNETT: That's okay. Number four and I'll read
13 it. The NRA requested all documents that refer or relate to
14 communications between you and AMC regarding the NRA. And
15 then -- and then we conferred with Ms. Rogers and Mr. Mason.
16 Ms. Rogers said we would agree to -- she countered our response
17 and she said we would agree to these four document sets. You
18 don't have those in front of you, Your Honor, but it just
19 happened today. And I think HBC, my clients, would agree to
20 three of the four. And there's only one that I think is probably
21 at issue from HBC's point of view.

22 THE COURT: Okay.

23 MR. QUINNETT: And so we're close, Your Honor, except
24 for this one request that we feel like NRA may be -- that we
25 can't comply with.

1 THE COURT: So Mr. -- Mr. Mason and Ms. Rogers, are
2 you-all thinking it would be -- it would be beneficial to pass
3 this motion and to give you an opportunity to further negotiate?

4 MS. ROGERS: I think that would be beneficial, Your
5 Honor. I did hear from HBC's counsel just now that he wanted to
6 hear from me on one of these categories. And if it would -- if
7 it would be an efficient use of time to just do that now in Your
8 Honor's presence to give guidance if needed, that might be
9 helpful. Otherwise, if Your Honor would prefer, you know, we can
10 continue to caucus amongst ourselves. Is the category that you
11 guys are interested in, is it the revenue recognition one?

12 MR. QUINNETT: Yes. Bingo.

13 MS. ROGERS: Bingo. All right. So, Your Honor, we can
14 move onto the next motion and try to resolve this among ourselves
15 or I can just kind of briefly give a capsule explanation of why
16 the NRA needs these documents.

17 THE COURT: Well, I mean, do you want me to determine
18 it or do you want me to give you an opportunity to work it out?
19 That's the question. Because I don't want to hear about it if
20 I'm not going to make a decision about it. I just want to give
21 you an opportunity to work it out.

22 MS. ROGERS: Your Honor, I think -- you know, I think
23 we're so close, it's just this one last item, so let's -- let's
24 have a chance to work it out and, you know, we might end up back
25 in front of you if we can't.

1 THE COURT: Okay.

2 MR. QUINNETT: And, Your Honor, I'm fine with that.
3 The one thing that I will say with respect to -- and, again, I
4 think we're 95 percent of the way there. With respect to
5 Ms. Rogers had requested with respect to item number four an
6 unredacted audit report from December 31st, 2019, we are
7 agreeable to that, but I do want to make sure that -- I believe
8 we previously produced a redacted version as highly confidential.
9 And so we would ask that that same -- the unredacted version also
10 be designated as highly confidential.

11 And then the other documents under the protective order
12 and then the other documents that are produced would also be --
13 would be designated as confidential, not highly confidential.

14 So I don't think that will be an issue, but I just want
15 to put that on the record. But with respect to the other narrow
16 issue, I'm obviously happy to confer and see if we can take
17 something off Your Honor's plate.

18 THE COURT: Okay. We'll pass that motion for now and
19 when will you-all update us on the status of that?

20 MS. ROGERS: So I'm -- go ahead. Sorry.

21 MR. QUINNETT: Go ahead, Ms. Rogers. Go ahead.

22 MS. ROGERS: I was just going to say, you know, that's
23 our category. I'm not really sure of any of HBC's objections,
24 but, you know, I have some availability this week to confer and
25 we have a couple of --

1 THE COURT: Can you let us know that within 21 day so
2 we can keep our deadlines?

3 MS. ROGERS: Certainly, Your Honor.

4 THE COURT: Okay. Just let us know the status of that
5 and within 21 days.

6 MR. QUINNETT: Yes, Your Honor. Thank you.

7 THE COURT: So then let's look at AMC's motion to quash
8 NRA's third-party subpoena. Ms. Payne -- the subpoena to
9 Ms. Payne?

10 MR. MASON: Yes, Your Honor.

11 THE COURT: Is it Ms. Payne? Yes.

12 MR. MASON: So with respect to Ms. Payne -- and I have
13 not had an opportunity to talk with Ms. Rogers further about this
14 particular subpoena. I'm happy to do that as well. But
15 Ms. Payne is a former employee of Ackerman McQueen. She was
16 Angus McQueen's companion. She spent a lot of time and she
17 worked on NRA TV.

18 She ultimately left Ackerman McQueen and the NRA served
19 a third-party subpoena on her essentially asking -- I believe
20 probably 95 percent of which -- of the requests was documents and
21 information that is actually Ackerman McQueen's documents and
22 information relating to NRA TV and the like. And I don't even
23 know if she has those -- those documents.

24 But setting that aside, to the extent that Ms. Payne or
25 there was any responsive documents in this case with respect to

1 Ms. Payne and NRA TV, those documents have already been produced.

2 I think what this subpoena is about is Ms. Payne was
3 engaged in a lawsuit -- well, let me -- let me say one other
4 thing first. The NRA had already requested that we provide
5 Ms. Payne's employment file, which we agreed to do and we have
6 done.

7 What I believe this particular subpoena is really about
8 is there was a lawsuit between Ms. Payne and Revan McQueen that
9 has absolutely nothing to do with the claims and defenses in this
10 case. Ultimately that was resolved in a confidential settlement.

11 And I believe that, for the most part, is what they're
12 attempting to obtain here. Again, I'd like to hear from Ms.
13 Rogers. But if you look at all of the requests and you look at
14 the third-party subpoena, it's -- it's grossly overbroad. Again,
15 these are all Ackerman's documents. But we haven't
16 necessarily -- we're not withholding those documents. But I
17 think that the big issue and what the NRA is really looking for
18 here is information about the dispute between Ms. Payne and
19 Mr. McQueen or personal information between Ms. Payne and Angus
20 McQueen, who passed away in the summer of 2019 that, again, we
21 don't believe has -- has any relevance to the claims in this
22 lawsuit.

23 So I don't want to -- I don't want to belabor too much,
24 because, again, I'd like to understand, I think, a little bit
25 more from Ms. Rogers what it really is that they're looking for,

1 and, again, I'm happy to confer with her further about that. I
2 know some of these issues were -- were raised and filed -- some
3 of these motions were filed a long time ago.

4 MS. ROGERS: Sure. So just to back up a little bit, it
5 would not be correct to say that the subpoena primarily concerns
6 a lawsuit between Ms. Payne and Ackerman. That's one of several
7 requests. But like 90 percent of the requests are about NRA TV,
8 which was this very expensive flagship product marketed to the
9 NRA by Ackerman that is at the crux of this lawsuit.

10 Ms. Payne was a vice president and creative director
11 who worked on several of the NRA TV shows that are hotly disputed
12 in this case, including Oliver North's American Heroes, Dana
13 Loesch's Relentless show and she worked on this Carry Guard
14 program, which I previously mentioned, Your Honor, that relates
15 to a bunch of other litigation too as an insurance program that
16 Ackerman worked on.

17 Here's a couple of crucial facts about the Tammy Payne
18 subpoena. Ackerman's contention that responding to the subpoena
19 is burdensome is irrelevant, because the burden is on Ms. Payne,
20 not on Ackerman, and she does not object. Ms. Payne is willing
21 to produce documents. She's willing to appear for a deposition.
22 So Ackerman, her former employer, interposes itself and says, no,
23 stop, we have some kind of confidentiality interest in these
24 documents.

25 Now, we don't even stipulate that they necessarily have

1 standing to do that. They cite a couple of cases where a former
2 CEO is subpoenaed after a merger and he got to review these
3 documents for privilege. But even so that dispute is litigated,
4 if memory serves, in 2020 in an Oklahoma court. And what the
5 Oklahoma court says is, all right, Ms. Payne has to hand over her
6 laptop, her phone, her documents to Ackerman and they can image
7 those devices, they can review them and they have to produce them
8 to the NRA. Ackerman says it's going to do that and it never
9 does. So Ackerman had its chance to interpose whatever interests
10 it has in Ms. Payne's documents and it didn't do it.

11 THE COURT: Didn't that -- didn't say order say also
12 for you to get the documents from Ackerman?

13 MS. ROGERS: So what the order -- and I don't have the
14 text in front of me, but I don't think Ackerman will dispute the
15 gist of it was Ackerman has to review and produce anything
16 responsive.

17 THE COURT: Right. So you were supposed to get them
18 from Ackerman. So why are you attempting to get them from
19 Ms. Payne in light of that order?

20 MS. ROGERS: Well, because Ackerman didn't give them to
21 us. And we think we have a right to get them from Ms. Payne
22 anyways. So this subpoena was technically issued in the prior --
23 the overlapping Virginia state court litigation that is now
24 stayed.

25 Ackerman took the position that it did not have to

1 produce the documents, because that case was stayed after the
2 Oklahoma court ordered them produced. So we said, fine, we'll
3 subpoena them in this case. Once again we serve a valid, lawful
4 subpoena and Ms. Payne does not object. Ackerman still has not
5 given us the documents and our subsequent -- the subsequent
6 motion practice was referred to this court.

7 So the discovery period has long since exhausted itself
8 and Ms. Payne had no objection to producing documents or
9 appearing for a deposition. She already apparently marshaled the
10 production once, because she gave them to Ackerman and they
11 didn't give them to us.

12 And, you know, now like time has run out. These are --
13 she worked on a highly relevant project. She's listed on a
14 document Ackerman produced to us like listing employees who
15 worked on NRA work. It's undisputed that she's a relevant fact
16 witness. And we know she has relevant materials, because in
17 their motion to quash Ackerman contends that reviewing them would
18 be burdensome. So there's obviously this -- according to this
19 Ackerman this burdensome volume of relevant material, but they
20 refused to look at it back when discovery was still ongoing. The
21 subpoena has been out there for a long time. They don't log --
22 their entire privilege log has not a single communication with
23 Tammy Payne, so we don't think they're saying that there's any
24 privileged communications with her.

25 If there's any confidential ones, then the protective

1 order gives them a tool -- like a clawback type tool that if
2 there's documents produced that you think is confidential you can
3 make a designation. They've done that with other third-party
4 subpoenas. So they have no privilege interests. Their
5 confidentiality interest is protected by their ability to
6 designate. And all of these burden objections that the recipient
7 of the subpoena ought to be making the recipient of the subpoena
8 did not make.

9 So for those reasons we -- we think the motion to quash
10 should be denied and the NRA should be able to obtain from
11 Ms. Payne the discovery that she has no objection to providing,
12 the discovery that is clearly relevant to the case.

13 THE COURT: So -- but do you contest -- do you contest
14 that they have the ability to object on relevancy grounds?

15 MS. ROGERS: We do, Your Honor, because there -- these
16 are -- these are not -- I mean, these are Ms. Payne's documents.
17 There's no evidence furnished that --

18 THE COURT: Well, it's still discovery. You know,
19 discovery requires that it be relevant, so --

20 MS. ROGERS: That's true, Your Honor, but the recipient
21 of the subpoena did not object. And I also --

22 THE COURT: She's not a party, so she wouldn't be
23 making relevancy objections. That's why I'm asking you that.

24 MS. ROGERS: Well, I don't think Ackerman would dispute
25 that the document requests we served, so most of these documents

1 requests are about NRA TV. That's clear -- it's by definition
2 relevant.

3 THE COURT: Let me ask you -- let me ask you about some
4 specific ones that caught my eye. You asked about Payne's
5 recruitment, employment or the terms of her employment.

6 MS. ROGERS: Yes, Your Honor.

7 THE COURT: How is that relevant to your claims and
8 defenses?

9 MS. ROGERS: Ms. Payne was staffed by Ackerman on
10 NRA TV and then billed back to the NRA. And there's an issue in
11 this case, you know, was she really doing important creative work
12 or was Angus McQueen effectively billing the NRA for his
13 companion's time.

14 So it's relevant what qualifications she had, how they
15 decided it was suitable to bill the NRA for her work and
16 that -- that's the relevance of that request.

17 THE COURT: What's the relevance of AMC's practices
18 regarding hiring and managing employees, vendors for work on
19 other AMC client accounts?

20 MS. ROGERS: So the relevance there, Your Honor, is
21 that, you know, we had at least one other former AMC client,
22 Clean Skies -- the Clean Skies Foundation come to us after we
23 filed this lawsuit and they said, wow, until we saw this lawsuit
24 we didn't know Ackerman -- and I'm paraphrasing a little bit, but
25 this guy was deposed. Until we saw this lawsuit we didn't know

1 Ackerman was doing this to others too. We had the same problems
2 with them.

3 THE COURT: What does that have to do with your
4 litigation.

5 MS. ROGERS: Well, because we want to know if the NRA
6 was being treated fairly, comparably to other clients, or we want
7 to know if -- if charges that were incurred on several accounts
8 or could have been applied to several accounts were just kind of
9 dumped onto the NRA bill.

10 And, again, you know, if Ms. Payne doesn't have those
11 documents she doesn't have them, but she is -- she's the former
12 CEO's companion who was billed voluminously to the NRA on NRA TV
13 and we want to understand from her, you know, how did Ackerman
14 make these decisions? How did we decide who was going to be
15 working on NRA TV? Who was going to be working on Clean Skies?
16 You know, how -- how -- what determined who and what ended up on
17 the NRA's bill. That's like the crux of this dispute.

18 THE COURT: So you want her take on it, because you're
19 not getting that from Ackerman, you're just getting it from a
20 former disgruntled employee.

21 MS. ROGERS: Well, I mean, disgruntled is Ackerman's
22 contention obviously. But, you know, I mean, we have obviously
23 sought similar discovery from Ackerman and this is the vice
24 president and creative director. It's not like we're asking a
25 mail room clerk to tell us her opinion of her former employer.

1 She, you know, worked on several of our most important programs.

2 THE COURT: What about AMC's practices regarding
3 interacting with client executives?

4 MS. ROGERS: So there AMC alleges that one of the
5 reasons it became -- it resisted the NRA's transparency efforts
6 in 2018 was that suddenly there were sexual harassment concerns
7 about an NRA executive that technically arose from incidents that
8 occurred over a year earlier, but didn't become a problem until
9 2018 when the NRA decided to cut its budget, by the way. So
10 we're a little skeptical of that and we would like an opinion
11 from a senior former employee -- well, not an opinion, she's not
12 an opinion witness, but a perspective on those practices.

13 And we think that Ms. Payne might have documents that
14 other Ackerman employees wouldn't regarding those practices,
15 because she was present at a lot of like dinners, drinks, social
16 events with client executives. She could provide valuable
17 testimony that would allow the trier of fact to assess the
18 credibility and weight of Ackerman's insistence that the reason
19 it ignored the NRA's budget cut efforts and transparency efforts
20 was that, you know, Josh Powell made some, you know, casual
21 remarks that made somebody uncomfortable.

22 THE COURT: And why is Payne's separation from AMC
23 relevant to your claims and defenses?

24 MS. ROGERS: So Ms. Payne publically filed an assault
25 claim against an executive, Revan McQueen. Ackerman has

1 consistently sought and obtained discovery in this case
2 regarding, you know, their insinuation that opposing counsel
3 beats his wife, regarding the personal affairs of NRA executives
4 and speaks that those go to credibility. We think that, you
5 know, the CEO's assaults of a former executive is likewise
6 relevant. Plus that she's providing fact testimony --

7 MR. GRUBER: Judge --

8 MS. ROGERS: -- about, you know, legal fees, was there
9 a settlement, basic -- basic concerns that go to credibility.

10 MR. GRUBER: Judge, if I could -- Mr. Mason can handle
11 the main part of this, but I have to address at this time that
12 they're going in and they're going to try and drag dirt on
13 Angus McQueen. Now, this is the law firm that -- that took all
14 of his business, too much before he died, sued him twice too much
15 before he died, 11 months into a 13-month cancer death sentence,
16 slandered him and libeled him. I mean, the employees of this law
17 firm slandered and libeled this man and Judge Fish found that it
18 was all false in a recent opinion.

19 And can it just stop with him dead a couple of years?
20 Because a lot of this goes to trying to show that a woman he was
21 a companion with, they keep going into it, but just all that kind
22 of stuff just has to stop.

23 MS. ROGERS: Just if I may, Your Honor, Judge Fish did
24 not find that any of those representations were false.

25 MR. MASON: Your Honor, --

1 MR. GRUBER: He did, but that's okay.

2 MR. MASON: -- if I can be heard. With respect to
3 Ms. Payne, first of all, Ms. Rogers is not correct. She was not
4 billed back to the NRA. Her salary was not billed back to the
5 NRA. She was not what's -- what's been known as a fee-based
6 employee and her salary was not directly or indirectly billed
7 back to the NRA, so that is -- that is absolutely not true.

8 If you look through these -- these requests for
9 production a lot of them do deal with NRA TV. And, again, we
10 have produced those -- those documents. I mean, like with
11 respect to number two, for example, I mean, if Ms. Payne was
12 involved in -- with NRA TV, we have produced those responsive
13 documents with regard to programming and viewership and analytics
14 and all of those things.

15 The real problem here is -- and I think Your Honor kind
16 of pointed it out a little bit -- is, you know, some of these are
17 just harassing again, I mean, asking about a bunch of AMC
18 clients. This has been going on for two years. They have
19 served, I think, like 40 third-party subpoenas to pretty much --
20 you know, I mean, at least a dozen current and former clients of
21 Ackerman McQueen requesting -- requesting all sorts of documents.
22 And so a lot of these, you know, are asking for those kinds of
23 documents. And we believe that that's improper. We believe that
24 those issues have already been heard, you know, with respect to
25 the other AMC clients by the Court and the Court has not

1 permitted discovery into those except in a limited circumstance.

2 And, you know, again, like the separation agreement,
3 the settlement agreement, I mean, those are the things that have
4 absolutely nothing to do with the claims in this case. The stuff
5 relating to NRA TV, to the extent she even has it, I mean, I
6 don't care if she produces it, but we've already done that. But
7 I don't even believe she has it. But all the other stuff, the
8 stuff related to other clients, the stuff related to interactions
9 with client executives and settlement agreements with respect to
10 a completely unrelated claim, it has absolutely no relevance to
11 the claims and defenses in this case.

12 THE COURT: A very big part of the question of the
13 documents is that it sounds like you're not really objecting to
14 her producing any documents that she has, so I'm going to go with
15 that.

16 But I am going to quash the subpoena -- well, I'm
17 not going to -- I'm going -- I'm not going to quash the subpoena,
18 but I am going to rule that certain topics are off limits. And
19 those being the ones that I was just discussing with you,
20 Ms. Rogers. AMC's practices regarding hiring and managing of
21 employee vendors for work on other AMC clients' accounts, AMC's
22 practices regarding interacting with client executives,
23 Ms. Payne's -- wait a minute. Any claim, complaint, allegation
24 about AMC, its employees, executives or clients, any
25 action/proceeding involving a claim that Ms. Payne has against

1 AMC. I just don't see the relevance of that to anything you've
2 pled as a claim or a defense in this case. And so I'm not going
3 to permit her to be questioned about any of that.

4 MS. ROGERS: Your Honor, could I be heard for one
5 second on just a couple of those?

6 THE COURT: Okay. I thought I had already asked you
7 about them, but you go ahead.

8 MS. ROGERS: Sorry, I just want to clarify the ruling.
9 So we talked about practices relating to interaction with client
10 executives and we talk about allegations about clients. Could we
11 at least question her about the NRA -- interactions with NRA
12 executives and allegations about the NRA as a client?

13 THE COURT: You want to ask her about her interactions
14 with the NRA?

15 MS. ROGERS: Yes. Basically if we take those
16 requests that --

17 THE COURT: I have a problem with her speaking for AMC.
18 That's the issue. And, you know, to the extent that you're --
19 you know, kind of -- you know, you keep throwing out what her
20 position was, what her position was, like she is an authority to
21 speak for them. Well, no, their 30(b) -- their 30(b) deponent is
22 the authority to speak for them on matters of policy and how they
23 proceed. She's not that. And so that does appear to be not
24 relevant to me in the context of her giving answers to questions.

25 If you want to ask her about some dealings she had with

1 NRA, I'm fine with that. But if you're asking her to speak on
2 behalf of AMC about some dealing with NRA, I'm not.

3 MS. ROGERS: Understood, Your Honor. We were only
4 deposing her in a personal fact witness capacity.

5 THE COURT: It sounds like that when you say it, but
6 then when you ask questions that talk about, you know, generally
7 AMC's practices, AMC's practices, then that's not -- that's not
8 asking her to answer questions based on her own personal
9 experiences and -- and -- and her role, you know. You're asking
10 her to speak on behalf of -- of AMC and that is inappropriate,
11 I believe.

12 MS. ROGERS: We understand, Your Honor, and we would
13 agree to only ask questions based on her personal knowledge and
14 obviously to the extent any of this testimony is introduced at
15 trial, the trier of fact would know that she's not testifying as
16 a 30(b)6 or in any other official representative capacity.

17 THE COURT: Okay. If -- Mr. Mason, if AMC has already
18 given all the documents that are being requested and you have no
19 objection if she still has them -- to her giving them if she has
20 them to, and your basis sounds like it was just that it would be
21 duplicative of your efforts, then, you know, that sounds like
22 it's moot.

23 MR. MASON: I believe so. I do want some
24 clarification, though, Your Honor, that we've been discussing
25 what it sounds like is a deposition of Ms. Payne and this is a

1 subpoena for documents.

2 THE COURT: Okay. I thought she was being subpoenaed
3 duces tecum to -- I heard something about a deposition, to a
4 deposition and to produce certain documents is what I thought.

5 MS. ROGERS: Yes, Your Honor.

6 MR. MASON: Well, I believe it's -- I believe it's
7 just -- it's just a document request. I'm looking at the
8 subpoena right now, subpoena to produce documents. There was no
9 subpoena served for --

10 THE COURT: Did I imagine, Ms. Rogers, that you said --
11 you were talking about deposing her?

12 MS. ROGERS: You did not, Your Honor. I was under
13 the --

14 THE COURT: That's where I got that from. I thought
15 that's what we were talking about was a deposition. So I
16 apologize if I got that wrong.

17 MS. ROGERS: Yeah. No, I apologize too, Your Honor. I
18 was under the impression that we had subpoenaed her for a
19 deposition. And if I could just have --

20 THE COURT: Well, if you haven't, that makes it easy.

21 MS. ROGERS: That makes -- Your Honor, I apologize.
22 Like I said, this comes a year before I joined the case. Just
23 give me one moment.

24 THE COURT: All right.

25 MS. ROGERS: Your Honor, I've solved -- I've solved the

1 mystery. So the first subpoena we served in the Virginia case
2 was for a deposition and documents. When Ackerman would not turn
3 over the documents in the Virginia case that stayed, we served
4 another subpoena in this case, but that was only a Rule 45
5 subpoena seeking documents. So that's all that's before us at
6 this time.

7 THE COURT: Okay. So, you know -- so then, again,
8 based on what Mr. Mason is saying, you -- you know, it's a moot
9 question. You can get documents from her if she has them as to
10 everything except AMC's practices regarding hiring or managing
11 employees, vendors for work on other AMC clients' accounts, AMC's
12 practices regarding interacting with client executives,
13 Payne's -- Payne's -- no, Payne's -- wait a minute. Any claim,
14 complaint, allegation about AMC, its employees, executives or
15 clients, to the extent there are documents that say that, and any
16 action, proceeding, involving a claim that Payne has against AMC.
17 So quashed -- quashed to that extent.

18 MS. ROGERS: Thank you, Your Honor.

19 THE COURT: Anything else to take up on that one? I
20 can see everybody being kind of tired and yawning at this point
21 after -- after two and almost a half hours of this.

22 MR. GRUBER: Well, we appreciate -- we appreciate you
23 sticking with us this long, all of us. So --

24 THE COURT: Absolutely. So that's all I had on -- on
25 my plate. Was there anything that I missed that's been referred

1 to me that's ripe?

2 MS. ROGERS: Nothing for today, Your Honor.

3 THE COURT: Okay. So any -- any appeal of my rulings
4 today will have to have a transcript of the proceedings attached.
5 And our electronic order will talk in terms of granting, granting
6 in part, denying, denying in part and we'll have deadlines for
7 those things that I've ordered be accomplished, otherwise, the
8 particulars, any findings and all of that will have to be gotten
9 from the transcript and attached. Okay?

10 MR. GRUBER: Thank you, Your Honor.

11 MR. MASON: Thank you, Your Honor.

12 THE COURT: Thank, y'all.

13 MS. ROGERS: Thank you.

14 THE COURT: We're adjourned then.

15

16

17

18

19

20

21

22

23

24

25

1

INDEX

2

Court's rulings..... 10, 36, 57, 64, 82

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, Jeff L. Foster, United States Court Reporter for the
2 United States District Court in and for the Northern District of
3 Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 22nd day of December, 2021
7
8
9

10 /s/ Jeff L. Foster
11 JEFF L. FOSTER, RMR, CRR
12 United States Court Reporter
13 1100 Commerce St., Room 1504
14 Dallas, Texas 75242
15 (214) 753-2349
16
17
18
19
20
21
22
23
24
25

EXHIBIT C

WAYNE R. LAPIERRE - Confidential
NATIONAL RIFLE ASSOC. vs ACKERMAN MCQUEEN

August 20, 2021

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 -----x

5 NATIONAL RIFLE ASSOCIATION OF,)
6 AMERICA,
7 Plaintiff and Counter-Deft.)

8 V.) Case No.

9 ACKERMAN MCQUEEN, INC.,) 3:19-CV-02074-G

10 Defendant and Counter-Plf.)
11 and

12 MERCURY GROUP, INC., HENRY)
13 MARTIN, WILLIAM WINKLER, AND
14 MELANIE MONTGOMERY,)

15 Defendants.)

16 -----x Pages 1-332

17

18 CONFIDENTIAL

19 REMOTE VIDEOTAPED DEPOSITION OF WAYNE ROBERT LAPIERRE

20 Friday, August 20, 2021

21 Fairfax, VA

22

Reported by: Sherry L. Brooks

Certified LiveNote Reporter

Job No. J7356202



800.211.DEPO (3376)
EsquireSolutions.com

WAYNE R. LAPIERRE - Confidential
NATIONAL RIFLE ASSOC. vs ACKERMAN MCQUEEN

August 20, 2021
212

1 289 true and correct?

2 A. Yes. 17:19

3 Q. Did you draft this letter? 17:19

4 A. I worked on it. It had input from, I 17:19
5 think, a couple of our board members that I think --
6 and a couple of other people -- our PR people. I
7 think a few attorneys looked at it.

8 Q. But at the end of the day, it was sent by 17:20
9 you, correct?

10 A. Absolutely. 17:20

11 Q. And you stand by everything -- 17:20

12 A. I absolutely do. 17:20

13 Q. Did you make any changes to this letter 17:20
14 before it was sent out to the board?

15 MR. CORRELL: Objection to the form. 17:20

16 A. I think as we put it together we made 17:20
17 changes in arriving at a final letter, and this is
18 the final letter.

19 BY MR. MASON: 17:21

20 Q. Did you publish this to the NRA Board of 17:21
21 Directors?

22 MS. EISENBERG: Objection. Vague. 17:21

EXHIBIT D

2018 and 2019 Comparisons

Programming and Staffing	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
Talent Fee	\$5,533,282	\$5,533,282	\$9,540,098	\$9,540,098	\$9,540,098
Commentators	\$0	\$0	\$0	\$0	\$0
NRATV Programming	\$5,363,672	\$5,363,672	\$4,800,000	\$4,800,000	\$4,800,000
NRATV Additional (OLN + AH)	\$0	\$3,129,722	\$0	\$0	\$0
NRATV Promotion/Outreach	\$0	\$0	\$0	\$0	\$0
Monthly Video Support/Video Essays	\$2,723,000	\$2,723,000	\$1,923,000	\$2,723,000	\$1,923,000
Subtotal	\$13,619,954	\$16,749,676	\$16,263,098	\$17,063,098	\$16,263,098
Operations	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
Support Staff Fee	\$3,591,570	\$3,591,570	\$3,136,026	\$2,357,112	\$3,136,026
Travel/Broadcast Expenses + Farmville Facility	\$230,000	\$300,000	\$0	\$0	\$0
MG OPEX	\$150,000	\$200,000	\$0	\$0	\$0
Emerson and Associates/Crime Initiative	\$186,000	\$186,000	\$0	\$0	\$0
Pass-through Expenses	\$950,000	\$950,000	\$0	\$0	\$0
NR OPEX	\$0	\$1,000,000	\$0	\$0	\$0
Subtotal	\$5,107,570	\$6,227,570	\$3,136,026	\$2,357,112	\$3,136,026
Mercury Group	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
MG Fee	\$2,285,312	\$2,285,312	\$3,103,358	\$3,103,358	\$3,103,358
Subtotal	\$2,285,312	\$2,285,312	\$3,103,358	\$3,103,358	\$3,103,358
Initiatives	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
FSP Ongoing	\$0	\$750,000	\$750,000	\$750,000	\$750,000
FSP/ FMV Media	\$0	\$5,000,000	\$0	\$0	\$0
NRA School Shield/Community Shield	\$0	\$150,000	\$0	\$0	\$0
NRA Carry Guard	\$4,350,820	\$4,162,116	\$0	\$0	\$0
Subtotal	\$4,350,820	\$10,062,116	\$750,000	\$750,000	\$750,000
Projects	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
Online/Digital Management Fee	\$1,309,130	\$1,309,130	\$1,286,550	\$1,286,550	\$1,286,550
Unification/Digital	\$750,000	\$750,000	\$0	\$0	\$0
Business Intelligence/Data Resources/Analytics	\$500,000	\$500,000	\$425,000	\$425,000	\$425,000
Annual Meetings - AM	\$750,000	\$750,000	\$750,000	\$750,000	\$500,000
America's First Freedom - Print	\$1,590,000	\$1,590,000	\$1,590,000	\$1,590,000	\$0
Speeches	\$100,000	\$170,000	\$0	\$0	\$0
Magazine Covers (2-3 per year)	\$70,000	\$0	\$0	\$0	\$0
Subtotal	\$5,069,130	\$5,069,130	\$4,051,550	\$4,051,550	\$2,211,550
Total	\$30,432,786	\$40,393,804	\$27,304,032	\$27,325,118	\$25,464,032
Other	2018 Budget	2018 RV	2019, 1a	2019, 1b	2019, 2
ILA Fee	\$60,000	\$60,000	\$0	\$0	\$0
Projects Initiated by NRA Employees	\$720,000	\$720,000	\$0	\$0	\$0
Subtotal	\$780,000	\$780,000	\$0	\$0	\$0
Grand Total	\$31,212,786	\$41,173,804	\$27,304,032	\$27,325,118	\$25,464,032
LESS 10/1/18 Budget Adjustments		(\$2,426,502)			
LESS 10/11/18 Budget Adjustments*		(\$705,269)			
PLUS January Delayed Billing			\$961,211.00	\$988,400.00	\$961,211.00
PLUS AIF/AM Wind-Down Costs					\$1,035,500.00
NEW Grand Total		\$38,042,033	\$28,265,243	\$28,313,518	\$27,460,743

*The \$705,269 in 2018 Budget Adjustments/Savings would increase to \$732,458 (increase of \$27,189 in savings) if Option 1b was selected.

10/16/18

CS 2/2

APPENDIX H
excludes:
SOOK CANS COPART
pay

MC eliminated \$100

All Intel Bargain
10/16/18

2019, Option 1

NRATV	2019, 1a	2019, 1b
Programming (See Appendix A)	\$4,800,000	\$4,800,000
Monthly Video Support/Video Essays (See Appendix B)	\$1,923,000	\$2,723,000
Support Staff Fee (See Appendix C)	\$3,136,026	\$2,357,112
Subtotal	\$9,859,026	\$9,880,112
 Talent/Commentators	2019, 1a	2019, 1b
Talent Fee (See Appendix C)	\$9,540,098	\$9,540,098
Subtotal	\$9,540,098	\$9,540,098
 Mercury Group	2019, 1a	2019, 1b
MG Fee (See Appendix C)	\$3,103,358	\$3,103,358
Subtotal	\$3,103,358	\$3,103,358
 Projects	2019, 1a	2019, 1b
FSP/FMV Production	\$750,000	\$750,000
Online/Digital Management Fee (See Appendix D)	\$1,286,550	\$1,286,550
Business Intelligence/Data Resources/Analytics (See Appendix E)	\$425,000	\$425,000
Annual Meetings - AM	\$750,000	\$750,000
America's First Freedom - Print	\$1,590,000	\$1,590,000
Subtotal	\$4,801,550	\$4,801,550
 Total	2019, 1a	2019, 1b
Total	\$27,304,032	\$27,325,118
 Plus, January Delayed Billing (See Appendix G)	\$961,211.00	\$988,400.00
Total	\$28,265,243.33	\$28,313,519.33

Note Other Appendices:
 Appendix H: 2018 Additional Q4 Savings
 Appendix I: Personnel Adjustments
 Appendix J: Additional Staff

2019, Option 2

NRATV	2019, 2
Programming (See Appendix A)	\$4,800,000
Monthly Video Support/Video Essays (See Appendix B)	\$1,923,000
Support Staff Fee (See Appendix C)	\$3,136,026
Subtotal	\$9,859,026
 Talent/Commentators	2019, 2
Talent Fee (See Appendix C)	\$9,540,098
Subtotal	\$9,540,098
 Mercury Group	2019, 2
MG Fee (See Appendix C)	\$3,103,358
Subtotal	\$3,103,358
 Projects	2019, 2
FSP/FMV Production	\$750,000
Online/Digital Management Fee (See Appendix D)	\$1,286,550
Business Intelligence/Data Resources/Analytics (See Appendix E)	\$425,000
Annual Meetings - AM (See Appendix F)	\$500,000
America's First Freedom - Print (See Appendix F)	\$0
Subtotal	\$2,961,550
 Total	2019, 2
Total	\$25,464,032
 Plus, A1F/AM Wind-Down Costs (See Appendix F)	\$1,035,500.00
Total	\$26,499,532.33
 Plus, January Delayed Billing (See Appendix G)	\$961,211.00
Total	\$27,460,743.33

CONFIDENTIAL

AMcTX-00065377

Appendix A: Programming

Show	Budget
Grant Stinchfield	\$275,000.00
Dana Loesch	\$480,000.00
Cam Edwards	\$275,000.00
Dan Bongino	\$275,000.00
North	\$900,000.00
Noir	\$875,000.00
LAFS	\$700,000.00
A&F	\$200,000.00
T&T	\$300,000.00
Videodigm Licensing	\$120,000.00
Media	\$400,000.00
Total	\$4,800,000.00

Appendix B: Monthly Video Support/Video Essays*

Scripted commentary, including; but, not limited to:

WLP Video Essays Pre/Production/Post

DL Video Essays Pre/Production/Post

CC Video Essays Pre/Production/Post

Weekly, as needed, OLN Video Essays Pre/Production/Post

Video editing, including; but, not limited to:

Executive Speeches Support Video Creation

Membership Recruitment Video Editing (for MMP, as needed)

Association and NRATV Marketing Videos

Association and NRATV Programming Promotional Videos

NRATV Daily Clipping/Promotion of Excerpts

Graphics and animation work, including; but, not limited to:

NRATV Programming Animated Graphics Packages

NRATV Programming Lower Third Graphics Packages

Ongoing Set Design for NRATV Sets/Talent

Social Media/Earned Media Promotion, including; but, not limited to:

NRATV Network and Programming

*Options 1a and 2 do not include a Commentators budget for 2019 as part of this job.

Under Option 1b, Commentators Pre/Production/Post are added back

into the budget and support staff is reduced to cover such.

Appendix C: Personnel - 1b ONLY

Talent*	Salary	Overhead	Profit	Total
Lt. Col. Oliver North	\$2,225,000.00	\$1,446,250	\$356,000	\$4,027,250.00
Dana Loesch	\$1,556,500.00	\$1,011,725	\$249,040	\$2,817,265.00
Colion Noir	\$420,000.00	\$273,000	\$67,200	\$760,200.00
Grant Stinchfield	\$300,000.00	\$195,000	\$48,000	\$543,000.00
Cam Edwards	\$270,000.00	\$175,500	\$43,200	\$488,700.00
Dan Bongino	\$500,700	\$750,000.00	\$135,000	\$885,000.00
Chuck Holton (1 Month)	\$15,833.33		\$2,850	\$18,683.33
Total	\$5,537,333	\$3,101,475	\$901,290	\$9,540,098.33

Support Staff**	Salary	Overhead	Profit	Total
Denise Sinisi	\$120,000.00	\$102,000.00	\$19,200.00	\$241,200.00
Sean Foster	\$80,000.00	\$80,000.00	\$12,800.00	\$172,800.00
Dennis Azato	\$175,000.00	\$148,750.00	\$28,000.00	\$351,750.00
Michael Aitken	\$158,000.00	\$134,300.00	\$25,280.00	\$317,580.00
Carl Warner	\$225,000.00	\$168,750.00	\$36,000.00	\$429,750.00
Tim Herr	\$100,000.00	\$85,000.00	\$16,000.00	\$201,000.00
Kyle Morgan	\$47,700.00	\$47,700.00	\$7,632.00	\$103,032.00
Ben Thomas	\$75,000.00	\$75,000.00	\$12,000.00	\$162,000.00
Patrick Kobler	\$80,000.00	\$80,000.00	\$12,800.00	\$172,800.00
Rachel Bonilla	\$95,000.00	\$95,000.00	\$15,200.00	\$205,200.00
Total	\$1,155,700	\$1,016,500	\$184,912	\$2,357,112.00

MG**	Salary	Overhead	Profit	Total
Tony Makris	\$650,000.00	\$487,500.00	\$104,000.00	\$1,241,500
Bill Powers	\$296,800.00	\$222,600.00	\$47,488.00	\$566,888
Nader Tavangar	\$235,000.00	\$176,250.00	\$37,600.00	\$448,850
Jon Carter	\$155,000.00	\$131,750.00	\$24,800.00	\$311,550
John Popp	\$137,000.00	\$116,450.00	\$21,920.00	\$275,370.00
Carly Jimeson	\$50,000.00	\$50,000.00	\$8,000.00	\$108,000.00
Eric Van Horn	\$70,000.00	\$70,000.00	\$11,200.00	\$151,200.00
TOTAL	\$1,593,800	\$1,254,550	\$255,008	\$3,103,358

*All talent OH is at .65

**All Support Staff and MG OH is calculated per the below:

Salary < \$100k = 1 to 1 OH

Salary \$100k - \$199k = .85 OH

Salary > \$200k = .75 OH

CONFIDENTIAL

AMcTX-00065380

Appendix C: Personnel

Talent*	Salary	Overhead	Profit	Total
Lt. Col. Oliver North	\$2,225,000.00	\$1,446,250	\$356,000	\$4,027,250.00
Dana Loesch	\$1,556,500.00	\$1,011,725	\$249,040	\$2,817,265.00
Colion Noir	\$420,000.00	\$273,000	\$67,200	\$760,200.00
Grant Stinchfield	\$300,000.00	\$195,000	\$48,000	\$543,000.00
Cam Edwards	\$270,000.00	\$175,500	\$43,200	\$488,700.00
Dan Bongino	\$750,000.00		\$135,000	\$885,000.00
Chuck Holton (1 Month)	\$15,833.33		\$2,850	\$18,683.33
Total	\$5,537,333	\$3,101,475	\$901,290	\$9,540,098.33

Support Staff**	Salary	Overhead	Profit	Total
Denise Siniisi	\$120,000.00	\$102,000.00	\$19,200.00	\$241,200.00
Sean Foster	\$80,000.00	\$80,000.00	\$12,800.00	\$172,800.00
George Scuzs	\$150,000.00	\$127,500.00	\$24,000.00	\$301,500.00
Stephen Walters	\$135,000.00	\$114,750.00	\$21,600.00	\$271,350.00
Dennis Azato	\$175,000.00	\$148,750.00	\$28,000.00	\$351,750.00
Michael Aitken	\$158,000.00	\$134,300.00	\$25,280.00	\$317,580.00
Carl Warner	\$225,000.00	\$168,750.00	\$36,000.00	\$429,750.00
Tim Herr	\$100,000.00	\$85,000.00	\$16,000.00	\$201,000.00
Danny Lyon	\$95,400.00	\$95,400.00	\$15,264.00	\$206,064.00
Kyle Morgan	\$47,700.00	\$47,700.00	\$7,632.00	\$103,032.00
Ben Thomas	\$75,000.00	\$75,000.00	\$12,000.00	\$162,000.00
Patrick Kobler	\$80,000.00	\$80,000.00	\$12,800.00	\$172,800.00
Rachel Bonilla	\$95,000.00	\$95,000.00	\$15,200.00	\$205,200.00
Total	\$1,536,100	\$1,354,150	\$245,776	\$3,136,026.00

MG**	Salary	Overhead	Profit	Total
Tony Makris	\$650,000.00	\$487,500.00	\$104,000.00	\$1,241,500
Bill Powers	\$296,800.00	\$222,600.00	\$47,488.00	\$566,888
Nader Tavangar	\$235,000.00	\$176,250.00	\$37,600.00	\$448,850
Jon Carter	\$155,000.00	\$131,750.00	\$24,800.00	\$311,550
John Popp	\$137,000.00	\$116,450.00	\$21,920.00	\$275,370.00
Carly Jimeson	\$50,000.00	\$50,000.00	\$8,000.00	\$108,000.00
Eric Van Horn	\$70,000.00	\$70,000.00	\$11,200.00	\$151,200.00
TOTAL	\$1,593,800	\$1,254,550	\$255,008	\$3,103,358

*All talent OH is at .65

**All Support Staff and MG OH is calculated per the below:

Salary < \$100k = 1 to 1 OH

Salary \$100k - \$199k = .85 OH

Salary > \$200k = .75 OH

CONFIDENTIAL

AMcTX-00065381

Appendix D: Online Digital Management Fee

Employee	Salary	Percentage	Allocation	Overhead	Profit	Total
Grant Spofford	\$ 255,000	100%	\$ 255,000	\$ 191,250	\$ 40,800	\$ 487,050
Collin Davis	\$ 250,000	50%	\$ 125,000	\$ 106,250	\$ 20,000	\$ 251,250
Chester Campbell	\$ 140,000	50%	\$ 70,000	\$ 70,000	\$ 11,200	\$ 151,200
Tom Richardson	\$ 250,000	50%	\$ 125,000	\$ 106,250	\$ 20,000	\$ 251,250
Scott Chidester	\$ 135,000	50%	\$ 67,500	\$ 67,500	\$ 10,800	\$ 145,800
Total	\$1,030,000		\$642,500	\$541,250.00	\$102,800	\$1,286,550.00

CONFIDENTIAL

AMcTX-00065382

Appendix E: Business Intelligence/Data Resources/Analytics

BI / Analytics	2019 Budget
Executive Reporting	\$50,000
Carry Guard Reporting*	\$0
Quarterly Sponsor Reporting	\$200,000
Site Optimization/Marketing	\$100,000
Qlik Dashboard Management	\$75,000
Total	\$425,000

*Represents a 15% discount on services
due to no CG reporting

Appendix F: 2019, Option 2: A1F/AM Discussion

Employee*	Salary	Admin/Tax (10%)	Total
ONE YEAR SEVERANCE			
Clay Turner FF			
Mark Chesnut FF			
Nancy Martin Amber Wolff			
Michael Ives			
Sub-Total	\$776,000.00	\$77,600.00	\$853,600.00
THREE MONTHS SEVERANCE			
Frank Winn	Salary	Admin/Tax (10%)	Total
Caile Turner			
Brandon Harn			
Amber Wolff			
Sub-Total	\$79,000	\$7,900	\$86,900
BUILDING COST**			
2019	Lease		Total
			\$95,000.00
2020			\$95,000.00
2021			\$95,000.00
2022 (6 months)			\$47,500.00
Sub-Total	\$332,500		\$332,500
Total	\$1,187,500	\$85,500	\$1,273,000
2019 Costs		\$1,035,500.00	

*No Cobra assistance assumed

**Would not be billed out if sub-leased

Appendix G: January 2019: Delayed 2018 Billing

NRATV	
Monthly Video Support/Video Essays*	\$110,000
Support Staff Fee	\$183,711
Subtotal	\$293,711
Projects	
Carry Guard	\$120,000
Business Intelligence/Data Resources/Analytics*	\$17,500
Annual Meetings - AM	\$372,750
Annual Meetings Indy (Planned for January billing)	\$157,250
Subtotal	\$667,500
Total	\$961,211

*Rather than wind-down costs, the above "hold costs" are applied to:

Monthly Video Support/Video Essays

Business Intelligence/Data Resources/Analytics

Wind-down costs are still applied to:

Carry Guard

*These projects will be put on hold for Q4; but, staff will remain employed, as work is budgeted for 2019.

CONFIDENTIAL

AMcTX-00065385

Appendix G: January 2019: Delayed 2018 Billing - 1b ONLY

NRATV	
Monthly Video Support/Video Essays*	\$110,000
Support Staff Fee	\$210,900
Subtotal	\$320,900
Projects	
Carry Guard	\$120,000
Business Intelligence/Data Resources/Analytics*	\$17,500
Annual Meetings - AM	\$372,750
Annual Meetings Indy (Planned for January billing)	\$157,250
Subtotal	\$667,500
Total	\$988,400

*Rather than wind-down costs, the above "hold costs" are applied to:
 Monthly Video Support/Video Essays
 Business Intelligence/Data Resources/Analytics

Wind-down costs are still applied to:
 Carry Guard

*These projects will be put on hold for Q4; but, staff
 will remain employed, as work is budgeted for 2019.

Appendix H: 2018 Additional Q4 Savings

NRATV	Q4
Programming	(\$192,645)
Support Staff Fee	(\$252,624)
Subtotal	(\$445,269)

→ Savings

Projects	Q4
Media	(\$260,000)
Subtotal	(\$260,000)

	Q4
Total	(\$705,269)

Appendix I: Personnel Adjustments

Support Staff	Salary	Overhead	Profit	Total	Monthly	Severance - Jan
Guy Mitchell	\$120,000.00	\$66,000.00	\$19,200.00	\$205,200.00	\$17,100.00	\$17,100.00
Cameron Gray	\$121,900.00	\$67,045.00	\$19,504.00	\$208,449.00	\$17,370.75	\$52,112.25
Caitlin Carpenter	\$72,500.00	\$39,875.00	\$11,600.00	\$123,975.00	\$10,331.25	\$10,331.25
Ashley Root	\$79,500.00	\$43,725.00	\$12,720.00	\$135,945.00	\$11,328.75	\$33,986.25
Alex Varney	\$85,000.00	\$46,750.00	\$13,600.00	\$145,350.00	\$12,112.50	\$12,112.50
Mark Tait	\$70,000.00	\$38,500.00	\$11,200.00	\$119,700.00	\$9,975.00	\$9,975.00
Ed Bailey (portion)	\$21,875.00	\$12,031.25	\$3,500.00	\$37,406.25	\$5,343.75	\$5,343.75
Jace Whatcott (portion)	\$17,500.00	\$9,625.00	\$2,800.00	\$29,925.00	\$4,275.00	\$4,275.00
Brad Nash	\$120,000.00	\$66,000.00	\$19,200.00	\$205,200.00	\$17,100.00	\$17,100.00
Charles Berthelot	\$90,000.00	\$49,500.00	\$14,400.00	\$153,900.00	\$12,825.00	\$12,825.00
Andrew Butler	\$60,000.00	\$33,000.00	\$9,600.00	\$102,600.00	\$8,550.00	\$8,550.00
Total	\$858,275	\$472,051	\$137,324	\$1,467,650.25	\$126,312.00	\$183,711.00

For reductions taking place 10/30, so 2 months of savings.
All receive 30 days severance, except CG & AR (3 months)

Q4 Savings (2 months)	\$252,624.00
-----------------------	--------------

CONFIDENTIAL

AMcTX-00065388

Appendix I: Personnel Adjustments - 1b ONLY

Support Staff	Salary	Overhead	Profit	Total	Monthly	Severance - Jan
Guy Mitchell	\$120,000.00	\$66,000.00	\$19,200.00	\$205,200.00	\$17,100.00	\$17,100.00
Cameron Gray	\$121,900.00	\$67,045.00	\$19,504.00	\$208,449.00	\$17,370.75	\$52,112.25
Caitlin Carpenter	\$72,500.00	\$39,875.00	\$11,600.00	\$123,975.00	\$10,331.25	\$10,331.25
Ashley Root	\$79,500.00	\$43,725.00	\$12,720.00	\$135,945.00	\$11,328.75	\$33,986.25
Alex Varney	\$85,000.00	\$46,750.00	\$13,600.00	\$145,350.00	\$12,112.50	\$12,112.50
Mark Tait	\$70,000.00	\$38,500.00	\$11,200.00	\$119,700.00	\$9,975.00	\$9,975.00
Ed Bailey (portion)	\$21,875.00	\$12,031.25	\$3,500.00	\$37,406.25	\$5,343.75	\$5,343.75
Jace Whatcott (portion)	\$17,500.00	\$9,625.00	\$2,800.00	\$29,925.00	\$4,275.00	\$4,275.00
Brad Nash	\$120,000.00	\$66,000.00	\$19,200.00	\$205,200.00	\$17,100.00	\$17,100.00
Charles Berthelot	\$90,000.00	\$49,500.00	\$14,400.00	\$153,900.00	\$12,825.00	\$12,825.00
Andrew Butler	\$60,000.00	\$33,000.00	\$9,600.00	\$102,600.00	\$8,550.00	\$8,550.00
Danny Lyon	\$95,400.00	\$52,470.00	\$15,264.00	\$163,134.00	\$13,594.50	\$27,189.00
Total	\$858,275	\$524,521	\$152,588	\$1,630,784.25	\$139,906.50	\$210,900.00

For reductions taking place 10/30, so 2 months of savings.
 All receive 30 days severance, except CG & AR (3 months)
 and DL (2 months).

Q4 Savings (2 months)	\$279,813.00
-----------------------	--------------

CONFIDENTIAL

AMcTX-00065389

Appendix J: Additional Staff

The following AM employees work on NRATV Programming and Monthly Video Support/Video Essays in a large capacity. While they are not billed in the fees, they are crucial to its success.

Concepting/Strategy
Henry Martin
Jesse Greenberg
Tammy Payne
Business Operations & Management
Melanie Montgomery
Lacey (Duffy) Cremer
Hayley Holmes
Trey Rick
Jeanne Oden
Platform Operations
Peter Farrell
Brian Darley
Victor Aboytes
Oscar Garcia
Abygail Thompson
Monique Warfield
Technology
Mike Dennehy
Justin Geiger
Edward Ned
Pre-Production & Operations
Jordan Underwood
Scott Kubes
Shahada Kari
Production
Tyler Petersen
James Parsons
Sherri Duran
Amy Hearn
Jason Wilson
Nathan Raglin
Darren LaSorte
Shad Wyckoff
Tim Katzenmeier
Rodney Autaubo
Benson Coleman
Matt Patterson
Ryan Lacy
Stephen Wymer
Walt Cox
Post-Production & Operations
Brandon Witt
JT Burg
Jason Bushore
Jesse Davidson
Patrick Vaughn
Trevor Dahlkemper
Media & Promotion
Kelsey Gosdin

Appendix J: Annual Meetings Personnel

The following AM employees work on the NRA Annual Meetings in a large capacity. While they are not billed in the MG, Online Digital Management or NRATV-related fees, they are crucial to its success.

Concepting/Strategy
Henry Martin
Jesse Greenberg
Business Operations & Management
Melanie Montgomery
Lacey (Duffy) Cremer
Hayley Holmes
Trey Rick
Jeanne Oden
Event Planning & Production
Nancy Martin
Media & Promotion
Kelsey Gosdin
Platform Operations
Peter Farrell
Brian Darley
Nicole Levin
Praxx Gray
Abygail Thompson
Monique Warfield
David Casteel
Preston Darley
Victor Aboytes
Oscar Garcia
Technology
Mike Dennehy
Justin Geiger
Edward Ned
Pre-Production/Production/Post-Production
Tammy Payne
Justin Charles
James Parsons
Trevor Dahlkemper
Jordan Underwood
Scott Kubes
Tyler Petersen
Amy Hearn
Jason Wilson
Ryan Lacy
Tim Katzenmeier
Nathan Raglin
Patrick Vaughn
Hannah Foster
Jason Bushore
Wes DeWitte
Photography
Michael Ives
Shea Hussey
Elizabeth Torres
Creative Deliverables
Caile Turner
Meg McElhaney
Sam Guertler
Kari Griffith
Design & Animation
Clay Turner
Brandon Harn
Jesse Davison
Jon Minson
Mike Galloway
Dean Wilhite
Lane Faglie
Kale Atterberry
Brandon Witt
Joshua (JT) Burg
Copywriting & Scripting
Sherri Duran
Bruce Parks
Josh Chesnut

* States word

what was done / how much / when

2017 paid verification

\$250 -

Nothing in 2018

EXHIBIT E

Filed Under Seal

EXHIBIT F

Filed Under Seal

EXHIBIT G

Filed Under Seal